ARBITRATION JOURNAL

Commercial Arbitration in International Reconstruction
The Arbitration of Patent Controversies
Proposed Amendment of the United States Arbitration Act
Decisions of the National War Labor Board
Voluntary Arbitration and the War
Review of Tribunal Activities
Report of the Motion Picture Arbitration Tribunals
Wartime Activities of the American Arbitration Association

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FOREWORD

FIGHT OR ARBITRATE

THERE is no mistaking the meaning of the word *war*. It is symbolic of the use of force throughout the world. From the beginning of time, its meaning has never changed. It means fighting, death, spoliation and destruction.

Those opposing war have never been able to unite on any one word that expresses the antithesis of war or that voices united opposition to force. Peace plans, mediation, conciliation, negotiation, appeasement and their variations are soothing terms, with little militant quality or organization to oppose force.

There is one word, as old as war itself, that is squarely opposed to war and force. It embraces all of the qualities that the various peace moves imply, but embraces them in dynamic action. It is capable of enormous expansion to meet post-war needs.

For many centuries, there has been a science of war. It has flourished until, in the present World War, it has reached complete mechanization and organization of the entire economic systems of the world. It must be opposed by a concept equally virile and capable of as high an organized efficiency. Nothing stands out as such an opponent but an equally well-organized and administered science of arbitration. Such a science will unite the scattered forces of those who strive for peace. It will compose the differences that will flood attempts at reconstruction at the close of the war. It offers to the men that design the new peace terms an instrumentality that moves the spirit and will of men, as well as furnishes the mechanical means to maintain peace. It is singularly adapted to the coming post-war economic problems, for arbitration was born and bred in commerce.

Arbitration is capable of enormous expansion and organization as a symbol, as an approach and as a procedure. But it needs to work continuously, methodically and expertly in every dark corner where a dispute is bred and with the impartiality and fairness that will inspire confidence throughout the world.

It will be the height of wisdom for those who take the helm to end the war and construct the new peace, to build arbitration fundamentally into the new world system. Let us start now to organize arbitration as the foe of war and make it the banner under which all peace efforts march against force.

ARBITRATION IN ACTION

Acknowledgment

Since the inception of the ARBITRATION JOURNAL, the Chamber of Commerce of the State of New York, with whose cooperation and encouragement the JOURNAL was founded, and Mr. Charles L. Bernheimer, Chairman of the Chamber's Committee on Arbitration, have generously provided, each year, the funds for an issue of the JOURNAL. Once again the Editorial Board acknowledges with deep appreciation Mr. Bernheimer's generous assistance in making available the funds for the publication of this issue, which is devoted so largely to subjects close to Mr. Bernheimer's interest—post-war economic reconstruction and Federal arbitration legislation.

A Choice of Ways

Not often, in a world at war, are men who are fighting that war in the production lines that send the tools of warfare to the front, given the choice between self-regulation and compulsion in keeping those assembly lines free of disputes. This is, however, exactly what President Roosevelt did in his Executive Order creating the National War Labor Board, for in that Order he said:

> "This Order does not apply to labor disputes for which procedures for adjustment or settlement *are otherwise provided* until those procedures have been exhausted."

The Order then outlined the procedures to be followed in adjusting disputes. They are: first, direct negotiations *or other procedures provided in a collective bargaining agreement;* or, second, conciliation by the Department of Labor; or, third, determination by the National War Labor Board, which for this purpose may use mediation, voluntary arbitration or arbitration under rules established by the Board.

Nothing could be more explicit than the offer of the choice of settling labor disputes at home through voluntary effort or the alternative of having a government agency take jurisdiction over them.

Again, in the Executive Order of October 3, relating to Wage and Salary Stabilization Policy, this priority to voluntary effort was "reaffirmed and continued" by the President; and in a state-

ment on behalf of the National War Labor Board by its Chairman on October 22, he said:

> "The Board expects that empoyers and employees throughout the country will give their wholehearted cooperation in continuing to adjust disputes by mutual agreement wherever possible, and thus facilitate the maximum production which is essential to winning the war."

This offer of self-determination seems not to have been fully appreciated by management and labor. There appears to be in both groups a lack of confidence, if not actual distrust, of their own capacities. There are also differences in motives. Labor may take its disputes to government in the belief that a victory won now will be enduring; management may take them in the belief that any decisions taken now will not endure beyond the war. The War Labor Board itself has said that it is not concerned with the future, but is meeting the war emergency.

Nothing, however, can be more certain than that the settlement of disputes by self-determination in the plant itself, through any process of arbitration, is more enduring and offers a better basis for post-war reconstruction and economic reorganization than any other means now available.

Commercial Arbitration in International Reconstruction

In an address delivered at the Twenty-ninth National Foreign Trade Convention meeting in Boston on October 9, Herman G. Brock, Vice-Chairman of the Inter-American Commercial Arbitration Commission and a Director of the American Arbitration Association, recited the progress being made at the beginning of World War II toward a uniform international system of commercial arbitration through the cooperation of such agencies as the International Chamber of Commerce, the International Law Association, the Inter-American Commercial Arbitration Commission and the American Arbitration Association. He also advocated that a planning organization be set up to study the reconstruction and integration of the machinery and projects existing at that time and their adaptation to post-war conditions.

Following this suggestion, the National Foreign Trade Convention included among its final declarations the following:

> A national, inter-American and Canadian-American system of commercial arbitration constitutes a complete hemispheric plan for the settlement of business disputes and provides an important element of

economic peace in post-war reconstruction. The Convention recommends that the National Foreign Trade Council collaborate with the American Arbitration Association, the Inter-American and Canadian-American Commercial Arbitration Commissions, the International Chamber of Commerce and such other international organizations as those named may invite, for studying of the plans and facilities in effect at the beginning of World War II and as projected, with a view to making recommendations for a complete world-wide system of commercial arbitration, to be instituted as part of the post-war reconstruction.

In accordance with this suggestion, a meeting is being called of representatives of these organizations and some others, to set up an International Commercial Arbitration Commission, a report of which will appear in the next issue of the JOURNAL.

Arbitration's New Weapon

Many weapons of warfare devised in peacetime quickly become obsolete or outmoded when subjected to actual tests of battle. When this occurs, the outcome of the war depends upon how quickly new and superior weapons can be devised and produced. And so it is with one of the chief weapons with which arbitration wages war on disputes that may have a decided bearing on the final outcome of this war. That weapon is arbitration law. For example, when the United States Arbitration Act was passed in 1925, it was devised to serve a peacetime purpose. But in wartime it has proved inadequate, hence the Bill to amend it which was introduced by Senator Maloney and Representative Kefauver and is now pending in both the Senate and House. In this issue of the JOURNAL, Dr. Wesley A. Sturges discusses the principal features of the Bill,* one of the most important of which would permit officers and agencies of the United States to enter into written arbitration agreements. Other proposed amendments deal with *ex parte* proceedings and provisional remedies, the extension of the Act to agreements to arbitrate causes which may be justiciable in United States courts and the removal of the present restriction to matters wherein the amount in controversy exceeds $3,000.

In conjunction with the proposed amendments to the Federal law, several important states that have vast war industries will take up in the coming year the question of bringing their arbitration laws into harmony with those of the fourteen states that

* See p. 227.

now have protection for all commercial contracts. The requests of many civic, commercial, bar and labor organizations for suggestions concerning the essential features of a modern arbitration law have led the Association to prepare a draft of a state arbitration act, which is reproduced in this issue.*

When the war ceases, there will be no foundation of arbitration law in the devastated areas or in newly constructed countries. Outside of the western hemisphere, it exists today only in the British Isles, Sweden and Switzerland. With the resumption of economic relations, the need will be urgent for a foundation of law. The fashioning of American arbitration law out of our war experience and its adaptation to post-war economic needs may well serve this broader purpose.

The Settlement of War Contracts with Private Industry

When this war ends, there will be billions of dollars worth of outstanding war contracts with private industry. There will be billions of dollars worth of loans based on unfilled orders. The whole of these contractual relations may be suddenly terminated.

The economic upheaval throughout this western hemisphere will be cataclysmic as compared to the end of World War I and there are even now litigations still pending that were started then. These questions, among many others, naturally arise:

What were the precautions taken in World War I that could be made applicable in World War II?

What was the machinery and its principles of operation that might be made applicable and be improved upon for use in World War II?

What legislation was necessary then and will similar legislation suffice now?

What new laws, facilities or techniques have been developed over the past quarter of a century and are available today that were not in existence in 1918?

What new complications are raised by such acts as lend-lease and export-control and other regulatory measures in contractual relations with allied powers; and does involvment of Latin-American Republics in war create new problems?

What, if any, steps are being taken in executing war contracts to include therein provisions for equitable settlement that will avoid long-delayed litigation?

What new problems are raised by price regulations, priorities, nation-wide conversion and expansion of industries, that were not present in World War I?

* See p. 310.

What part can and should arbitration take in these adjustments so as to speed up settlements and economic reconstruction in this country?

These and many other questions have directed the attention of the American Arbitration Association toward the possible prevention of a huge congestion of claims, not only in the United States, but between ourselves and our neighboring Republics. It has had a preliminary study made of the Settlement of War Contracts with Private Industry under Two World Wars and is appointing a special committee to consider what part arbitration can take and to plan for its use in domestic, inter-American and international war contracts for the settlement of accounts and controversies with private industry.

Labor Relations and Arbitration Conference

Somewhere along the many paths of human progress, the special interests of Government, the public, labor and management converge in a common interest. At some points, the paths are explicit and clear, at others hazy and confused. Some thinkers are far ahead, others purposely obstruct or inadvertently lag. Some fear for the preservation of free enterprise, others see no menace in its abolition.

The war is like a furnace in which these interests are being fused and hurriedly welded together in a common cause to win the war. Many things are being thought and done which are accepted because they are believed to be temporary, others are striking roots from which the flowering is most obscure.

The American Arbitration Association is administering a national voluntary labor tribunal to help drive disputes out of war production. It is carrying arbitration to plants throughout the country as its contribution to the war effort. Its advisory services set thousands of men and vast machinery on the path of industrial peace. But the war must end some day, and then what of these diverse interests now making common cause for war?

Some of the men who have been using the Tribunals of the Association or have been collaborating in its far-flung outposts, have asked whether some wholly neutral, impartial, disinterested forum could not be provided where all of these interests might meet and exchange views and voluntarily arrive at some common recommendations and action that might be constructive in that period of ending the war and when reconstruction begins. This

envisages a conference where men lay aside for the moment the particular self-interest they are contending for and bring that self-interest into relation to other self-interests that they may merge into a common interest for winning the peace. It envisages a pooling of ideas, projects, ideals, ambitions and experiments from the viewpoint of national and international interests, and a body of men of such deep penetration that it cannot be swayed toward any one especial interest or be stampeded by any self-seeking cause, however flaming in its call.

Such is the suggestion and the motive which has impelled the Association to take the initiative in setting up a Labor Relations and Arbitration Conference, which it hopes to see become an autonomous body under its own leadership as its work develops. Its program is, first, to find a common ground for meeting, and that seems to be arbitration, for it is the present and ever-growing symbol of cooperation, amity and understanding in human relations. Its second step is to bring into common discussion the many diverse elements that have a hand in guiding the destiny of labor relations. Its third step is to find if there is any concrete action upon which all can agree as desirable in post-war reconstruction. Its fourth is to lend a hand, if such agreement can be reached.

This Labor Relations and Arbitration Conference will have many subcommittees that will study and deal with their own problems and out of them make a substantial contribution to larger post-war reconstruction work.

Post-War Commercial Arbitration in the Americas

The Inter-American Commercial Arbitration Commission, which already has a very active Committee on Inter-American Business Relations that is interested in driving disputes out of inter-American trade, has created a new Committee called the Inter-American Planning and Conference Committee. Its function is to see that the existing policies and machinery set up for the settlement of trade and economic disputes during this war are of increased usefulness in post-war adjustments. It will also develop new plans for maintaining permanent inter-American commercial peace and cooperation in present as well as in reconstruction plans.

The Conference will also be concerned with the relation of present inter-American trade amity to the larger sphere of inter-

national trade amity in post-war reconstruction. All organizations interested in keeping inter-American trade routes and terminals clear of grievances, misunderstandings or controversies and in plans for preventing their occurrence will be invited to collaborate in the work of this Conference Committee.

Volunteer Service

Arbitration is one of the oldest volunteer services in the world. From earliest times it was a friend of the parties or a disinterested person of their choosing who settled their dispute. There was no thought of compensation, except the gratitude of the parties and the approbation of the community.

The war has released a vast amount of volunteer service of the first quality. Scarcely a man or woman in civilian life but is doing his or her share. But arbitration still shines as an outstanding example. The corps of volunteer arbitrators has greatly increased, and this despite the demands for manpower elsewhere. The Panels of the American Arbitration Association are expanding—not only in their service in its own commercial, labor and other tribunals, but these Panels are being drawn upon by such important Government agencies as the Department of Justice, to serve on Alien Enemy Hearing Boards; the Office of Price Administration, to serve on War Rationing Appeal Boards, and by other groups for similar service. In a recent call to 100 members of the Panel to serve on War Rationing Appeal Boards, 62 members responded. This volunteer service, unrewarded by any public acclamation, is symbolic of the spirit of America that is behind the war effort.

The Problems of Small Business

Small business seems to be the only group that has no powerful voice, by way of organization or resources, to speak for it. It is probable that in the retail field alone several hundred thousand retail firms will be forced out of business or will require government aid to keep them going. In either case, the problems of adjustment will be on a scale hitherto unknown.

Can the voluntary services of a great group of experts like those on the National Panel of Arbitrators of the American Arbitration Association be called into service and not only assist the government in this task, but lessen the hardship by making these adjustments in a friendly way? The Panel in New York

City alone numbers more than 2,000 men. This is a problem to which the Association is directing its attention.

The Expeditious Settlement of Accident Claims—a New War Service

Could the ancient Greeks, Romans and Egyptians, who recorded arbitrations on their cryptic slabs, look down upon the United States, they would rub their eyes in wonder at the pattern of arbitration that is unfolding in commercial, labor and civil relations, at the vast regiment of men who comprise Panels of Arbitrators, and at the flow of pacific settlements through the war industries of America.

The intricacy of this pattern is augmented by the expansion of the arbitration of accident claims which is being extended this month in six leading cities: Boston, Chicago, Detroit, Newark, Philadelphia and St. Louis. Through the cooperation of a special committee representing the Association of Casualty and Surety Executives and the American Mutual Alliance, a specific plan, based upon the New York City experience since 1933 of the Accident Claims Tribunal of the American Arbitration Association, will be put into operation in these cities.

The plan will save manpower and relieve over-burdened courts and curtailed staffs of law firms; it will benefit claimants who face induction into the service or the departure of witnesses, by making settlements possible before they leave, and it will help to build goodwill in America in an important field of human relations.

COMMERCIAL ARBITRATION IN INTERNATIONAL RECONSTRUCTION

HERMAN J. BROCK *

WHEN the second World War began its devastation of Europe, no one foresaw that the economic peace machinery of the entire world would be thrown into chaos and eventually complete disintegration. In the short period of months, we have seen the efforts of centuries either destroyed or broken under the march of force.

Not the least of these disasters was the disruption of a collaborative undertaking to organize commercial arbitration upon a world-wide basis. At the beginning of World War II, the American Arbitration Association, the Inter-American Commercial Arbitration Commission and the Court of Arbitration of the International Chamber of Commerce were engaged in creating joint facilities which they believed would stimulate the use of arbitration and eventually protect all trade routes and terminals from commercial disputes and differences. At that time, the Court of Arbitration of the Chamber offered a model for the two great continents now in the grip of war; the Inter-American Commission offered the model for the American Republics and the American Arbitration Association offered a national system for the United States. These groups were following similar principles and standards in their individual and joint development.

The problem these three organizations faced was how to integrate their systems and how to expand them so as to encourage the use of arbitration by business men generally and how to provide facilities that would leave no area of foreign trade isolated and unprotected from the menace of disputes. Their problem was also to provide in each country facilities and a practice equally commendable and trustworthy that would command the confidence of buyers or sellers many thousands of miles distant from each other and facing the difficulties of diverse languages, customs and traditions and of different laws.

* Vice-President, Guaranty Trust Co. of New York and Vice Chairman, Inter-American Commercial Arbitration Commission. An address delivered at the 29th National Foreign Trade Convention in Boston, Mass., on October 9, 1942.

It seemed important, for example, that there should be no loopholes for aggravated disputes to clog trade channels, let us say, between Brazil and Belgium, Canada and the Argentine, the United States and Africa, or the component parts of the British Empire. For it was clearly apparent that any interception of the flow of foreign commerce by misunderstandings, grievances or disputes in one part of the world would have its repercussions far from the immediate scene of the controversy.

Under the Chamber's slogan, "To World Peace through World Trade," adopted during Mr. Thomas J. Watson's tenure as its President, considerable progress had been made in the formulation of the common objectives and discussions were going forward as to the best method for implementing them. Among these common objectives were the following:

1. The generally accepted belief that the settlement of commercial disputes should be carried on as a part of a system of free enterprise within the framework of trade relations and development and that this voluntary method of settlement should be kept free from political negotiation and diplomatic relations.

2. The general adoption of the principle that future disputes should be made subject to arbitration at the time the contract was made and that there should be a universally accepted arbitration clause for such contracts.

3. The unification of arbitration law and the adoption of standards that would make it possible for foreign traders everywhere to have somewhat identical conditions for the enforcement of arbitration agreements and awards was deemed to be an essential undertaking.

4. The adoption of a code of procedure that could be followed in any country whenever the parties named it in their arbitration agreement and that would permit of an arbitration being held whenever the parties desired it, under approximately the same procedural conditions.

5. The maintenance of a permanent international panel of arbitrators, having established qualifications which would insure impartiality and competence as a requisite for appointment to the office. A kind of certified arbitrator, it was thought, might result.

6. Provision for an administered service wherein there should be an arbitration committee and sub-committees with delegated powers to function under Rules of Procedure.

It was thought these common objectives might be furthered by periodic international commercial arbitration conferences, somewhat in the nature of the International Conferences of American States and tentative plans for the holding of such conferences were under discussion.

To these three organizations, a fourth was added in 1938. Through the cooperation of the National Foreign Trade Council and the United States Chamber of Commerce, a Canadian-American system completed the facilities for the western hemisphere. It is due to the interest and efforts of James A. Farrell as Chairman of the Joint Conference Committee of the United States and Canadian Chambers of Commerce that a Canadian-American Commercial Arbitration Commission has been set up under the joint auspices of the Canadian Chamber and the American Arbitration Association. With its organization, facilities were completed for the arbitration of commercial disputes anywhere in the western hemisphere concerning any commodity or service that flowed through its trade channels.

Nor were these four organizations alone in this collaboration. The Federation of Chambers of Commerce of the British Empire was moving toward a uniform system of commercial arbitration, based upon the English Arbitration Act of 1889 and upon the Rules and practice of the London Chamber of Commerce. The International Law Association had appointed a committee to examine into legal problems and the International Institute at Rome for the Unification of Private Law had made a rather exhaustive study of procedure and formulated a draft of an international law on arbitration.

Into this build-up for a world-wide system of commercial arbitration, under which a proceeding or adjustment could be held at any time or place under relatively the same conditions in any country, there was being meshed a new orientation of commodity exchanges. For example, cotton arbitrations which had generally been held in Manchester, England, were being decentralized under an agreement between the American Arbitration Association and Manchester Chamber of Commerce, under which such arbitrations might be held in either the United States or Manchester under uniform regulations. Previously, similar cooperation had been established by the Anglo-American Fur Trade Conference, as a result of which disputes over fur importations, previously adjusted almost exclusively in London, were thereafter arbitrated in New York by what is now the American Fur

Merchants Association, under the supervision of the American Arbitration Association. A study of other commodity exchanges, functioning chiefly in London, was also under way.

The approach to the Permanent Court of Arbitration at The Hague which had settled so many controversies between nations, prior to World War I, showed an almost prophetic insight of the war to come. Early in 1940 the American Arbitration Association communicated with the Secretary General of the Court and an agreement was reached upon the use of the following clause, as amended and approved by the Court:

> Any controversy or claim arising out of or relating to this contract shall be settled with the cooperation of the International Bureau of the Permanent Court of Arbitration by a special Board of Arbitration sitting at The Hague or, in case a state of war existing in the vicinity making impossible the assembling of parties, their witnesses and commodities in that city, sitting in such country as the parties designate, under the rules of the Permanent Court of Arbitration or under such other rules as the parties may agree upon.

This amendment carried with it the procedure that special boards of the Court could sit wherever the parties may elect, in the United States or other Republics if necessary, and act under whatever rules they choose—including those of either the American Arbitration Association or the International Chamber, with the proviso that if the parties wish a case to be considered as judged with the cooperation of the International Bureau of the Court, to the effect that the award is to a certain extent rendered with the authority of the Court, the special board of arbitration should to some extent act under its Rules. The details of working out such proceedings were suspended by the war. But the experiment then in process of arbitrating possible disputes where one party was a government and the other a national of another government, held very real possibilities for maintaining economic peace.

In the Pacific area, negotiations were under way between the American Arbitration Association and the Hawaiian Chamber of Commerce and the Chamber of Commerce of the Philippine Islands for systems of arbitration covering American trade routes. In the matter of the Philippine Islands, a joint Philippine-American Committee had already been set up by the two organizations. These various endeavors represented a very considerable amount of research, negotiation and consultation and

of the scientific exploration of the foundations of commercial arbitration as it has come down through the centuries. These joint endeavors sought to find a way of integrating the existing separate systems and of expanding them so each country might have its own tribunals, but operated under a uniform plan so there might be no possibility of a dispute escaping settlement through some loophole of arbitration law, loose procedure, incompetent arbitrators or faulty administration.

These organizations were bent upon finding some concept of a science of arbitration upon which they could agree and a platform upon which all could stand. In the western hemisphere group, they included such concepts as the following:

1. That the means of making and keeping economic peace must be as highly and intelligently planned and organized on as scientific a basis in the future as have been the means of making economic warfare.
2. That the means of making and keeping that peace must be as permanent, continuous and unrelentless as are the means for making war and they must be expressly contrived to foresee and combat war.
3. That these means must generate and maintain a sufficient level of goodwill to predispose persons and nations to an amicable settlement of controversies, and that a way must be found for measuring or estimating this level so it may not fall below the danger line.
4. That commercial arbitration offers a permanent machinery and procedures strong enough to make the settlement of disputes expeditious, certain and final and flexible enough to cover unforeseen circumstances or unpredictable events.

During the war period, it has been incumbent upon the arbitration organizations in the western hemisphere to carry forward the principles and practice and the standards and ideals that animated these pre-war conferences. It has fallen upon the three American systems to keep alive the traditions and projects of international commercial arbitration and to carry on the necessary experiments and educational work.

In this undertaking they have had the collaboration of the United Nations. The British Purchasing Commission for the Empire; and the Dutch, Russian and Swedish purchasing agencies have, by their use of an American Arbitration Association clause in their contracts, enforceable in this country, kept alive the

traditions of goodwill and practical settlement of foreign trade controversies and kept open a pathway for future cooperation.

At this stage of the war, no one can say what the specific terms of international peace may be; or when they will come into full operation. While it is not possible for us to lay down any of its terms at this time, we may nevertheless proceed with the utmost certainty in the matter of foreign trade arbitration.

We do know that the half-starved war-ridden people need to be fed, that vast amounts of American commodities will be needed for rebuilding Europe and Asia and Africa, that new industries must be started and financed, that people must be technically trained and that foreign markets will be opened with ever increasing speed.

It is no less certain that all of these undertakings will be shot through and through with suspicions, misunderstandings, differences and controversies and that the foreign trade contract in time of reconstruction will carry a heavy load of loss and delay and futility, unless a way is found in advance to circumvent them. It is a task that challenges the best thought of the many powerful groups interested in the future of foreign trade.

It seems to me that from this country, where commercial arbitration has become a militant force in helping to win the war and is to be found behind every American endeavor, there should emanate plans for carrying it into post-war reconstruction and that the National Foreign Trade Council should join with these other pioneers in organized arbitration, and such others as they may invite, in setting up a planning committee to study the reconstruction and integration of the arbitration machinery and projects existing at the beginning of the war and their adaptation to post-war conditions. It should also explore changing economic conditions, particularly the private and public contracts in trade relations, and formulate some plans which our government could take to a peace conference as essential elements in post-war reconstruction.

Let us make permanent in the new order our belief that commercial arbitration is one way to World Peace through World Trade. And let us begin now to lay plans for realizing that belief.

THE ARBITRATION OF PATENT CONTROVERSIES

JOHN F. ROBB *

Is the arbitration procedure a method of settlement adaptable to questions affecting patent matters, such, for instance, as are ordinarily litigated in patent suits? I think the answer is "Yes"!

Disputes over patents customarily comprise three general matters of controversy. These are, first, the question of validity; second, the question of infringement that constitutes, with the first, the basis of practically all patent suits involving the technical questions of patent law; and, third, controversy which pertains to the question of enforcement of license agreements or other contracts made under the patents.

For many years it has been a matter of contention, in the patent profession primarily, as to whether the validity and infringement of patents are susceptible of being adjudicated by arbitration. Since the enforcement and interpretation of licenses are very largely questions involving the law of contracts, I do not think there has been much difference of opinion regarding the fact that arbitration is quite applicable thereto, and can settle disputes of this nature with the same satisfactory results as have been achieved generally in arbitrating contracts of ordinary commercial classes.

It would seem that the viewpoint appertaining to matters of validity and infringement of patents heretofore largely assumed has been narrow and based primarily on lack of knowledge and experience with the procedure, also the thought that only a court of law or equity is qualified to deal with litigation involving these questions. I have never believed that the objection stated was well founded, for courts of law and equity, as they were distinguished prior to the adoption of the new federal rules of civil procedure, are in reality laymen judges called in to determine the technical questions of infringement and validity of patents when these issues are raised in litigation. However, such judges do get considerable training in patent law in the more active territories of litigation of the country and become highly efficient administrators of such law.

* Member of the Ohio Bar and of the Cleveland law firm of Robb & Robb, Patent and Trade Mark Attorneys.

I feel that it will be of interest to patent owners and the patent profession particularly, therefore, to be informed of the arbitration proceeding which I shall discuss hereinafter, primarily because of the effectiveness of this proceeding as it applied to adjudication of validity and infringement of certain patents forming the subject matter of disputes.

It is well known today that patent litigation is of a special type, which probably involves expense exceeding that applicable to almost any other class of legal dispute. The cost of patent litigation is frequently a tremendous burden upon the litigating parties. It is so heavy in many instances that it is often infeasible for individual patent owners to undertake, and even corporations of considerable size have found the expense so great that they are very slow indeed to embark upon patent lawsuits that frequently run over a term of years before final adjudication or settlement. Moreover, in this country the unique condition exists that a patent may be litigated in one circuit of the ten circuits of the United States to a final decision, and then relitigated under certain conditions in a separate or different circuit—a procedure that is shocking to anyone having a fair sense of efficiency.

With the foregoing introductory outline, I propose now to deal with a very important case of arbitration handled by my firm, as counsel for the owner of the patents in controversy, which has convinced me that effective results may be produced in settling patent litigation by availing of the principles of arbitration such as laid down by the American Arbitration Association. The case I have reference to involved certain of the largest manufacturers in the particular field of invention to which the patents litigated related. Effectively speaking, this single arbitration resulted in the adjudication of what might be said to be eight different infringement suits, all based upon the same patents and all handled practically as a single piece of litigation, but with the eight other concerns involved in the arbitration represented by their respective counsel or attorneys.

It should be noted that the arbitration case under discussion was, to some extent, facilitated as to the arrangements for the proceeding by the fact that the defendants, so to speak, were members of a large master association, and the efficient operation of the association was brought to bear upon the arbitration situation by cooperation in bringing a large number of the members of the association into the preliminary arbitration contract.

THE ARBITRATION AGREEMENT

The arbitration agreement entered into took the form of a patent license agreement in which the patent owner was the licensor, as usual, the agreement making provision for the acceptance of the license, including its arbitration terms, by such members of the association, to which I referred, as might wish to accept licenses under the patent rights involved.

Certain provisions of the agreement set up that the board of arbitration should be composed of one member chosen by the patent owner, another member chosen by the prospective licensees (alleged infringers), and a third member chosen by the first two, a common method of selection of arbitrators. The members actually chosen consisted of a university professor versed in the special technical art to which the patents of the contract related, a patent lawyer who was chosen by the prospective licensees, and a retired Rear Admiral of the United States Navy, selected by the two first arbitrators and constituting the Chairman of the board.

The agreement also, among other provisions, set up the patent owners and the patents involved in the controversy; provided for voluntary acceptance of the agreement by the alleged infringers; carefully set forth the rights granted and reserved; provided in advance for the amount of royalties to be paid upon the arbitrators' award; and also contained a provision that if any one or more of the patents involved were invalidated by a United States court of original jurisdiction, the licensees should be privileged to cease paying royalties.

This brings me to the portion of the agreement applicable directly to the arbitration procedure, something which was treated at length so as to avoid any misunderstanding.

In this connection the payment of royalties under the patents alleged to be infringed by the prospective licensees was conditioned upon the settlement of two main issues by the arbitration board. These issues were, first, the validity and scope of the patents involved; and, second, whether or not the products of the prospective licensee (alleged infringer) were an infringement of one or more of said patents. The first issue was to be decided by a special hearing, since it must have been preliminarily established that the patents were valid and of some scope, for otherwise there would be no necessity to consider questions of infringement. The

second issue of the infringements by the various licensees was to be settled by separate hearings dependent upon resolving of the first issue in favor of the patent owner.

In the determination of the question of infringement, as prescribed by the contract, much of the usual and sometimes endless procedure of ordinary suits to determine this question was eliminated by the mere provision in the contract requiring the accepting licensee and possible infringer to furnish to the Board of Arbitration, subject to the inspection by the patent owner and/or its attorneys, such information regarding the constructions of the alleged infringers or licensees as was deemed necessary by the Board of Arbitration to enable determinations of the questions involved in the proceeding. The latter, of course, were primarily the questions of infringement.

The agreement made further provision that the decisions of the arbitration tribunal should be final, and if applicable to later different designs manufactured by the licensees or alleged infringers, should be binding upon the parties to the agreement as long as it remained in effect. It also provided that the general arbitration procedure should comply with the Arbitration Law of New York State.

PRELIMINARY PROCEEDINGS OF THE ARBITRATION

For comparison with ordinary trial procedure in the courts, the mechanics of the trial of the issues in this case are of special interest. It is well known that as a general rule, and as a result of experience, "arbitrators are not bound by the rules of evidence, and because parties are permitted, before arbitrators, to tell their story and the facts in an informal fashion, a controversy may be tried before arbitrators in anywhere between one-fifth to one-tenth the time required in court." (See *"Arbitration Benefits the Lawyer,"* by Popkin, ARBITRATION JOURNAL, Vol. 6, Nos. 2 and 3, page 114). I think, generally speaking, that the foregoing statement applied to this case which I am discussing, for, notwithstanding the large number of counsel representing the eight different licensees, alleged infringers, there was relatively little objecting during the whole progress of the trial.

As a matter of information, the mechanics of the arbitration procedure should be generally indicated. Obviously, before the

cases of the respective parties could be presented at the hearing, two things of importance had to be done:

The first task of the Arbitration Board, after its selection, and at its first meeting, was to draw up the rules of patent arbitration procedure to be followed by the parties, since these rules were to govern the parties to the proceeding and the manner of presentation of proofs. The rules were in some phases such as would be used in ordinary arbitration cases, and, generally summarized, established a definition of the parties to the proceeding, appointed a chairman of the board, provided for the contingency of incapacity of any arbitrator, selected a secretary, indicated the times of hearings and informal meetings of the Board, mode of sending notices to the parties, the number of arbitrators constituting a quorum, the order of the proceedings involving the presentation of proofs, provisions for custody of the records and data submitted and inspection thereof (the arbitrators not being privileged to review the data prior to its offering at the hearings), mode of closing the hearings, method of making the awards, immunity of the arbitrators and nature of the evidence to be received as to the character of the copies of records, patents and extracts from textbooks and publications.

It was necessary that the defending parties or prospective licensees should file the data or disclosure of their constructions with the Arbitration Board. A time was fixed for this and due compliance with the requirement for submission of the data took place. With the filing of the complaint by the patent owners and the answer incorporating the defenses of the eight prospective licensees allegedly infringing the patents in controversy, the case was brought to issue.

All parties were required first to submit their respective cases in reference to the common issue of determining the validity and scope of the patents, to enable a decision to be made upon this issue on closing this portion of the case.

TRIAL OF THE ISSUES

As previously intimated, the first issues confronting the Board of Arbitration were the highly important ones involving the validity and scope of the patents alleged infringed, requiring preliminary adjudication, since there would be no occasion to consider questions of infringement if the patents were invali-

dated. Following the opening statements, the patent owner proceeded to take its proofs, which involved the offering in evidence of the patents, the explanation of the patented inventions by a renowned technical expert in the field of invention to which the patents related, and complete treatment of the history of the file wrapper contents of the patents as they affected the questions of validity and scope.

As their case, the prospective licensees collectively offered in evidence the prior art and their interpretation of the file wrapper histories of the patents, including expert testimony in regard to the relation of the prior art to the alleged infringed patents. Then the patent owner offered rebuttal testimony. The presentation of lengthy briefs of authorities by both parties closed the trial of the first issue of validity and scope.

The Arbitration Board then suggested to the opposing parties that each party present an outline of a proposed award and findings for the Board to arrive at, based upon the view of each in the light of the evidence presented at this first hearing. When this was done, the Board took the case under advisement and arrived at a unanimous decision in respect to the validity of the patents and their scope.

The decision was unlike the usual run of court decisions in a very tangible respect. It established conclusions as to each patent involved, determining the scope of the claims as not including certain definite constructions which were specified in a large number of summary paragraphs. In other words, the effect of the decisions was that the patents were valid but did not include in their scope certain types of constructions.

The patents having been favorably adjudicated, therefore, as to validity and scope in such a manner as to render necessary the carrying forward of the further procedure to determine the question of infringement of the individual constructions of the various prospective licensees (alleged infringers), the latter issue was next made the subject of the arbitration procedure.

When presentation of proofs upon this issue was completed, the Board of Arbitration received evidence on the infringement issue from each of the licensees involved and thereafter adjourned the hearing. Upon completion of the Board's study of the proofs offered, an immediate award was made in favor of or against the party particularly involved. The award was the final conclusive decision affecting the issues.

Thereupon each additional infringement situation affecting the patent owner and the next alleged infringer or prospective licensee was tried and awards reached as soon as the Board could finish its study in the necessary periods between different case presentations.

In some instances where several infringements were alleged by the patent owner, the award rendered by the Board was in favor of the patent owner as to one or more constructions, and against the patent owner as to one or more constructions alleged to be the infringements.

The procedure of the hearings for determination of the infringements was carried forward expeditiously and little or no time was involved in objections, because the patent owners accepted the proffered evidence of the alleged infringer's constructions, originally presented under the contract provisions. The patent owner previously had ample knowledge of just what each alleged infringer was producing in the commercial field so no difficulty was incurred in this connection. The periods of times consumed in trying the infringement issues for the different parties were, of course, different because of the variation in the number of infringements alleged. In an instance or two a single day was sufficient to settle the infringement and enable the Board to make its award, whereas in other instances the issues required somewhat longer periods to determine.

FINAL AWARD

When the hearings were all completed, the individual awards having been made with record notice to the parties involved, the Board drafted a final award setting up the complete listing of the various awards rendered in favor of or against the parties.

No opinion was rendered in reference to any award explaining how the award was arrived at, though at the conclusion of the hearings, upon the request of counsel, the Chairman of the Board did make an explanation for the purposes of the record, indicating the views of the Board somewhat more positively, as distinguished from the original negative indication of constructions excluded from the scope of the patents, revealing what was considered in the various constructions alleged to infringe that brought a particular construction or constructions within the scope of the patents. Such an explanation was necessary, ob-

viously, in order to determine any possible future infringements that might have to be adjudicated by reason of new structures being put on the market by alleged infringers or prospective licensees.

RESULTS OF ARBITRATION

The arbitration resulted, of course, in awards favorable and adverse to nearly all parties concerned. Effectively speaking, eight patent suits were adjudicated in respect to approximately twenty-eight different constructions of infringing machines. As in all litigation, it was impossible for both parties to win. The awards finally arrived at were about equally divided between the parties.

I have been counsel in many patent suits, the trials of which have ranged from a day or two days anywhere up to six weeks, and my experience indicates that if this arbitrated litigation which I have described in this paper had been the basis of an ordinary patent suit in respect to the alleged infringements of each defending party, the expense involved would have been at least four times as great. That is to say, I calculate that the expense of two of the infringement causes involved in this arbitration, had they been by ordinary court suits, would have been approximately the same as that involved in trying the issues in the eight different causes that were arbitrated, and in this connection I take into consideration only the expense of the trials in the United States District Court and not the expense that would have been involved in appeals according to ordinary procedure which would have been about forty to fifty per cent of the trial expense. The tremendous saving in the cost of the whole litigation becomes self-evident from the foregoing.

However, there is another angle, and that is the time consumed. Necessarily, considerable preparation was involved on the part of counsel preliminary to the starting of the arbitration hearing on the patent validity and scope issues, which occupied perhaps four or more days. Hearings were then recessed for two or three days pending the decision of the Board on the first issues. Then the hearings were resumed on the final infringement issues and occupied approximately eight or ten days. This ended the whole trial in reference to all parties concerned, and final awards were of record in the proceedings within two or three days after the end of the hearings, being merely a summary of the individual awards handed down during the hearings.

It should be remarked, however, that one of the greatest time-saving factors involved in arbitration of the class herein discussed resides in the fact that the arbitration may proceed at any time as soon as the arbitration agreement is formulated and accepted. It does not have to wait its turn among hundreds of other cases in the crowded calendars of the courts, as do ordinary litigated cases.

I estimate that the time consumed, had the eight cases separately gone to trial in the United States Courts, would have been at least five times that actually taken by the arbitration proceeding. This is a decidedly variable factor, however, depending on the opposing counsel involved and their methods of trying law suits.

I am convinced that while this arbitration proceeding involved some unusual conditions and some special difficulties incident to the unfamiliarity of two of the arbitrators with patent procedure, the disposition of the arbitrated causes was expeditiously effected with a tremendous saving from the time-consuming and money viewpoints, and closed up litigation in a period of twenty days of direct trial work, which litigation might have continued over five to ten years if the cases had been presented individually in the United States courts.

GENERAL OBSERVATIONS

I have not attempted, in this survey of the carrying out of a patent arbitration agreement, to deal with the general legal phases affecting enforcement of arbitration in the Federal and State Courts. Discussions of this latter nature have been made in published papers with great thoroughness, as for instance in Deller's article, *"The Use of Arbitration in Patent Controversies,"* 21 J.P.O.S., 209, March, 1939, and O'Brien's excellent review of this matter in *"Enforcement of Arbitration Agreements in Infringement Disputes,"* 22 J.P.O.S., 289, April, 1940. I may say, however, that I believe that Sections 2 and 3, 43 Stat. 883 (see Federal Arbitration Act, 9 U.S.C.A., Sections 1-15), afford ample ground for compelling enforcement of arbitration agreements affecting patents, irrespective of the manner in which the Courts have heretofore interpreted this section of the Statute.

It is impossible for me to see why, where an arbitration contract is made between citizens of different states, and the con-

troversy involves the factors requisite to adjudication of such controversy on the basis of a contract only, such a contract should not properly be enforced by a Federal Court. Arbitration contracts are commonly enforced by State Courts.

It is true, in respect to arbitrations of agreements affecting patents, that the awards of the arbitrators do not, and cannot, have the effect of an adjudication of a patent controversy by a Federal Court that would possibly affect others than the parties to the controversy. In other words, the law of comity does not apply in respect to arbitration decisions. However, as affecting the parties directly involved in the controversy, who are the ones primarily interested in the arbitration adjudication, the arbitration contract, in all equity, should be enforceable, and when the arbitration is concluded, the parties involved will derive the advantageous results which they intended to secure by their agreement.

My primary objective in outlining what was achieved in the controversy discussed in this paper has been to show what was accomplished in respect to arbitration involving issues of patent infringement and validity that were settled finally and as satisfactorily to all parties concerned as could be the result of any species of litigation. The fact that the issues of infringement and validity of patents are matters of controversy over which the Federal Courts have exclusive jurisdiction is no reason why such matters should not, by voluntary agreement between the parties, be settled by getting together the parties as commonly done, or by recourse to a species of settlement litigation which such parties deem of far more advantage than complicated legal procedure.

PROPOSED AMENDMENT OF THE UNITED STATES ARBITRATION ACT

WESLEY A. STURGES *

I. GENERAL PURPOSES OF THE UNITED STATES ARBITRATION ACT

THE United States Arbitration Act as originally enacted on February 12, 1925, was designed to facilitate the use of arbitration in settling commercial disputes.

It was made to apply to written agreements to arbitrate disputes arising out of maritime transactions and disputes arising out of interstate or foreign commerce.

At about the same time arbitration statutes of like pattern were being sponsored, or had been enacted, in the more important commercial States. They related to agreements to arbitrate controversies arising out of commercial transactions which were consummated within their respective jurisdictions. Such statutes are now in effect in the following States and Territory: Arizona, California, Connecticut, Hawaii, Louisiana, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, and Wisconsin.

Three major purposes are accomplished by this legislation, including the United States Arbitration Act, as follows:

1. These statutes overcome the prevailing common-law rules whereby a party to an arbitration agreement can revoke his agreement to arbitrate, provided he does so before an arbitration is completed and award rendered. This common-law rule is known as the "rule of revocability" of arbitration agreements. This common-law rule of revocability of arbitration agreements spoke itself in two general classes of cases, as follows: (1) A and B might agree at common law to arbitrate a dispute arising between them. C might be appointed arbitrator. Under this common-law rule, A could revoke the authority of C at any time before C had made his award. In such case all of the proceedings up to the moment of revocation by A are nullified. (2) A might, notwithstanding his agreement to arbitrate a given dispute,

* Professor of Law, Yale University School of Law, and Chairman of the Law Committee of the American Arbitration Association.

initiate a suit in court and refuse entirely to participate in an arbitration. B could do nothing at common law about A's revocation or repudiation of the arbitration contract by A.

The foregoing arbitration statutes, including the United States Arbitration Act, expressly overcome this common-law rule of revocability with respect to arbitration agreements which are in writing.

By section 2 of the United States Arbitration Act written agreements for arbitration which come under that statute are declared to be "irrevocable." Under section 3, a party to such agreement cannot revoke the arbitration agreement and sue in court because the aggrieved party may cause the court to stay any action so attempted. And by section 5 the aggrieved party may appeal to the court to appoint an arbitrator if the adverse party refuses to participate in the appointment of an arbitrator pursuant to his agreement. Under these sections, moreover, the recalcitrant party cannot effectively revoke the authority of an arbitrator who has been duly appointed pursuant to the agreement or by the court.

None of the proposed amendments will affect these provisions of the present act.

2. These arbitration statutes also overcome another common-law rule which is a corollary of the foregoing rule of revocability, namely, the common-law rule that arbitration agreements cannot be specifically enforced. By this rule there could be no positive enforcement of an arbitration agreement.

These statutes, including the United States act, overcome this common-law rule by expressly providing that agreements to arbitrate, if they are in writing and otherwise within the act, shall be specifically enforceable. This is provided for in general terms in section 4 of the act. The right of specific performance under these statutes is particularly important because it enables an aggrieved party to an arbitration agreement to make application to the court designated in the act to appoint an arbitrator when the other party refuses to go forward with his arbitration agreement. This also has been noted above as an aspect of the act which is designed to overcome the common-law rule of revocability.

None of the proposed amendments would change these provisions of the present act.

3. The third general purpose of these statutes may be cited as follows: To simplify the common-law procedure for enforcing

and for vacating or modifying awards. By the prevailing common-law rules, if B were successful in an arbitration with A, but A refused to perform the award, B would find it necessary to initiate a civil litigation to enforce the award much the same as if he were to sue originally upon the cause submitted to the arbitrator. Similarly, if A felt aggrieved by an award rendered against him, it would be necessary for him to initiate court litigation if he wished to test its legality and have it vacated if invalid.

Under these arbitration statutes, this common-law procedure is simplified. Indeed, a more expeditious and summary remedy is provided for each situation. There is substituted a "motion practice" whereby A or B, as the case may be, may, by motion or petition, expeditiously invoke the court designated in the statute for the relief which he otherwise would sue for in a civil action (secs. 9, 10, 11, and 12).

None of the proposed amendments will affect these provisions of the present act.

II. ARBITRATION STATUTES, INCLUDING THE UNITED STATES ARBITRATION ACT, ARE DEPENDENT UPON A WRITTEN ARBITRATION AGREEMENT

It may be emphasized that the United State Arbitration Act, as well as the corresponding State statutes cited above, do not apply to an arbitration agreement unless it is in writing.

None of the proposed amendments of the present act will change this requirement.

There is, of course, no legal requirement in these statutes, or otherwise, that any party shall enter into an arbitration agreement. And in order to bring an arbitration agreement under the provisions of these statutes the parties must voluntarily agree in writing to submit their dispute or disputes to arbitration.

It also may be noted that these statutes, including the present United States Arbitration Act, embrace two general classes of written arbitration agreements: (1) Written agreements to arbitrate disputes which may arise between the parties in the future; (2) written agreements to arbitrate only a dispute or disputes which already have arisen between the parties. The first class of agreements are commonly referred to as "future disputes clauses"; and they are commonly inserted in commercial transactions (*e. g.*, a sales contract, warehouse contract, lease, etc.) at the time the principal contract is closed. The

second type of arbitration agreement is frequently called a "submission agreement." It is entered into by the parties only after they have become involved in a dispute.

Under the foregoing arbitration statutes generally a "submission agreement" is not necessary if a dispute arises under a "future disputes clause."

None of the proposed amendments will change the general application of the United States act to these two general classes of written arbitration agreements.

III. SCOPE AND PURPOSES OF THE PROPOSED AMENDMENTS *

Aside from proposed amendments designed merely to clarify the provisions of the act or to remove legal technicalities that have developed in litigation under the act since 1925, there are the following substantial proposed amendments:

1. Extension of the act to embrace written agreements to arbitrate labor controversies.

Just as the present act was designed to overcome the common-law rules of "revocability" and "nonenforceability" of written agreements to arbitrate commercial controversies arising between the parties, so by section 2A, as proposed, would the act be extended to written agreements to arbitrate labor controversies.

The amendment would be merely enabling; it would not compel parties to agree to arbitrate such disputes; the act would apply only if they so agreed in writing; and section 2A would not apply to any such written agreements made prior to the effective date of new section 2A.

By section 2A, written future-disputes clauses or written submission agreements entered into by a labor organization with an employer or group of employers engaged in commerce or by one labor union with another labor union would be irrevocable and enforceable contrary to the common-law rules of revocability and nonenforceability. The award would be enforceable by expeditious motion practice as now provided in the act, or it could likewise be vacated if there were sufficient cause as provided in the act (secs. 9 and 10).

* Text of the changes which are proposed to be made in the existing United States Arbitration Act by the Bill (S. 2350), introduced by Senator Maloney and now pending in Congress, may be obtained upon application to the JOURNAL.

As in the case of written agreements to arbitrate commercial disputes, so in the case of a written agreement to arbitrate a labor controversy under proposed section 2A the parties would determine in their agreement what disputes they would arbitrate, and their agreement would be effective accordingly under the act. They may by their agreement embrace all disputes arising between them, or only some, as they shall designate in their agreement. This is a matter of agreement of the parties and the drafting of their arbitration agreement.

Proposed section 2A is substantially a copy of a corresponding amendment of the New York arbitration law, which became effective in 1940. (See Report of the New York Joint Legislative Committee on Industrial and Labor Relations of 1940.) Section 2A includes written arbitration agreements entered into between two or more labor organizations, as stated above. This provision does not appear to have been considered in connection with the New York amendment, nor was it included in the New York amendment.

2. Extension of the act to written arbitration agreements entered into by officers and agencies of United States.

Proposed section 2B is designed to enable officers and agencies of the United States, having authority to enter into a contract on behalf of the United States or such agency, to enter into a written future-disputes clause covering disputes which may arise out of the main contract, and to enter into a written submission agreement to settle by arbitration a dispute which already may have arisen out of such contract.

There appears to be widespread doubt—and there is a little judicial authority—that such officers and agencies do not now have the legal power to enter into such arbitration agreements. This amendment would give them the power, to be exercised in their discretion.

Since the Congress seems to have found that the United States Arbitration Act is a worthy piece of legislation in behalf of private contractors, it is not clear why officers and agencies of the United States should be disabled from using arbitration agreements which will qualify under the act, if it is deemed desirable to do so. To remove this disability would not, of course, make mandatory the use of such agreements.

As in other cases, also, the scope of the arbitration agreement would be determined in each case by the agreement as written by the parties.

Section 2B, like proposed section 2A, would be effective only as to written arbitration agreements entered into after the section became effective.

3. Extension of the act to agreements to arbitrate causes which may be justiciable in courts of the United States.

At present only written agreements to arbitrate controversies arising out of maritime transactions or commerce, as defined in the act, are subject to the United States Arbitration Act.

By the proposed amendment of section 2 the act is sought to be extended to written agreements to arbitrate any other and different controversy which might be the subject of a civil action or proceeding between the parties in a court of the United States. Under this amendment, parties might agree in writing to submit a tort claim as well as contract claim to arbitration and make such agreement subject to the act. They would be allowed to enforce such agreement under the act if they could satisfy the existing requirement of diversity of citizenship which presently conditions the jurisdiction of district courts of the United States.

4. Removal of the jurisdictional requirement of $3,000.

By the proposed amendments of sections 4, 5, 7A, 8, 9, 10, and 11 of the present act, the parties to a written arbitration agreement qualifying under the act would be enabled to invoke the remedies of the act as therein provided regardless of the amount of the matter in controversy.

Apparently, under the present act, the remedies therein provided to enforce an arbitration agreement, or to have an arbitrator appointed by a court, or to have an award confirmed and enforced, or to have an award vacated or modified or corrected as provided in the act, are not available unless the amount of the matter in controversy exceeds $3,000 in accord with the requirement for civil actions generally which are sought to be brought in the district courts of the United States on the basis of diversity of citizenship of the parties.

It is not contemplated that this elimination of the $3,000 requirement will overload the district courts of the United States with cases under the act. This is not expected because experience demonstrates that once the legal remedies under an arbitration statute are made clear and expeditious for overcoming the common-law rules of revocability and nonenforceability of arbitration agreements, most parties faithfully perform their arbitra-

tion agreement and any award rendered under it. Comparatively speaking, only very infrequently need the statutory remedy actually be invoked. And only rarely is there occasion to invoke the statute to vacate an award. The courts of the United States would not, therefore, be burdened with many applications or petitions under this act.

Furthermore, if an arbitration agreement is otherwise subject to the United States Arbitration Act, it seems that the remedies of the act should be made available with respect to it, and to any award rendered thereunder, whether they involve more or less than $3,000.

5. Clarification of the act with respect to *ex parte* arbitrations.

There seems to be substantial doubt concerning the effect of *ex parte* arbitrations under the present act. It is sought to clarify and validate such arbitrations and the awards rendered therein by proposed section 7A.

This proposed section 7A is a substantial copy of a corresponding provision of the New York arbitration law, which has been reviewed and sustained by the New York Court of Appeals.

The general problem considered here may be posed with reference to our previous parties, A and B, as follows:

A may refuse to participate in an arbitration proceeding. He may rely upon a contention to the effect that for some good reason, in fact or in law, he did not enter into a valid arbitration agreement. Of course, if he has not entered into such an agreement he is not bound to arbitrate. But the preliminary question may ever be put in issue, whether or not he has entered into such agreement. Perhaps, for example, an agent closed the agreement without the principal's (A's) authority; or perhaps A's name was forged, or for other legal reason A is not bound.

May A appear before the arbitrator and put in issue before him "the making" of the arbitration agreement? May he appear and go through with the hearing, and then, for the first time, go to court and challenge the award—for example, when the award has gone against him—on the ground that the arbitration agreement was invalid or on the ground that he made no valid arbitration agreement? Shall he be allowed so to speculate upon the outcome of an award in his favor, but challenge the whole proceeding in court on the ground that he did not enter into a valid arbitration agreement when the award has gone against him?

Proposed section 7A, following a like provision in the New York arbitration law (which, as stated before, has been sustained by the New York Court of Appeals), undertakes to clarify the rights of the parties on these questions including assurance to A of full opportunity to put in issue "the making" of the arbitration agreement. Under the proposed amendment he must exercise reasonable diligence and promptness in doing so. By the same token, will A be denied the opportunity to speculate upon an award in his favor, and then seek to invalidate the proceedings if the award is adverse on the grounds that there was no valid arbitration agreement to start with.

6. Clarification of the act with respect to the use of provisional remedies.

The proposed amendment of section 8 of the act relates to the use of provisional remedies—like attachment, for example—in connection with arbitrations. There have been doubts whether or not provisional remedies, such as attachment, may be used pending an arbitration under an agreement coming under the United States Arbitration Act. And if such process could be used, and were used, would the party invoking such process be held to have waived his rights under the arbitration agreement?

The proposed amendments would resolve these doubts and provide for the use of such process in the discretion of the court.

The proposed amendment is a substantial copy of a corresponding provision of the Connecticut arbitration act.

7. Remainder of proposed amendments are designed to clarify the meaning of the present act and to reconcile existing provisions, so far as necessary, with the foregoing proposed amendments which have just been mentioned for their major importance.

DECISIONS OF THE NATIONAL WAR LABOR BOARD

Their Effect on Management and Labor Prior to October 3, 1942

Marion Dickerman *

On January 12, 1942 the President issued the Executive Order No. 9017 which created the National War Labor Board. The United States was at war and Congress had declared that there should be no interruption of any work which contributed to the effective prosecution of the war.

At a conference of representatives of labor and industry, which met at the call of the President on December 17, 1941, it had been agreed that for the duration of the war there should be no strikes or lockouts, and that all labor disputes should be settled by peaceful means.

Thus it became the primary function of the Board, as stated in the President's Order, to see that there should be no interruption of any work which contributed to the effective prosecution of the war.

The Board is composed of twelve special commissioners appointed by the President. Four of the members are representatives of the public, four of the employers and four of the employees.

The decisions of the Board, as expressed in the Directive Order in each case, become binding on all parties concerned.

Many questions have been raised in the numerous cases which have been certified to the Board, but the issues which are most frequently involved in these cases are those concerning: union security, wages, the Board's jurisdiction, overtime pay, equal pay for equal work, and matters of arbitration.

Although the Board was established to settle those particular cases which came before it, nevertheless over-all basic principles underlie and are apparent in its decisions.

UNION SECURITY

One of the most bitterly fought questions to come before the Board has been the one of union security. The convictions on each side are deep-rooted.

* Director of Public Education of the American Arbitration Association.

Points of View. The employers are concerned with individual freedom, the right of the open shop, loyalty to old employees who are not members of the union, and a real fear of the alleged encroachments of a union shop upon the rights of management. The unions, on the other hand, want higher wages, a better standard of living for their families and more nearly equal opportunity for their children, which they hold the power of a union shop would guarantee them. Then, too, they fear the impersonal power of a great corporation and the expanding power of a rival labor organization.

Formula Used. The Board's answer to this problem has been the maintenance-of-membership formula. This formula was recommended by the National Defense Mediation Board in many of the cases which came under its jurisdiction.

Chief Justice Walter P. Stacy, spokesman for the panel majority which made the general recommendation in the Federal Shipbuilding case (No. MB 46) rejected the demand of the union for a union shop. He held, however, that in view of the fact that the union was giving up, at the request of the government, the right to strike and the right to any general wage increases, except automatic adjustments, for a period of two years, a maintenance of membership provision was a just compensation.

The first form which this order took appears in the case of the Federal Shipbuilding and Dry Dock Co. (No. MB 46). It states in the Directive Order:

> "In view of the joint responsibility of the company and the union to maintain maximum production during the present emergency and of their reciprocal guarantees that there shall be no strikes or lockouts . . . . there is an obligation upon each employee who is now a member of the union or hereafter voluntarily becomes a member to maintain his membership in the union in good standing during the life of the agreement."

This clause does not require any worker, at any time, to join the union. It does not require the company to employ only members of the union and is, therefore, not a closed shop. It does not require any employees who have been hired by the company to join the union and is, therefore, not a union shop. It does not require the company to give preference in hiring to members of the union and is, therefore, not a preferential shop. It does not require any old employee, any new employee, or any employee whatever to join the union.

By this provision for voluntary membership and a maintenance of membership for the remainder of the contract, however, the Board states that individual freedom is protected and union security granted.

The employer members for many reasons voted unanimously against this decision; first, because no chance of withdrawal from the union was given and, second, because the Board refused to adopt the recommendations made by the employers relative to certain union controls.

Although the decisions of the Board have been unanimous in more than three-fourths of the cases it has decided, this maintenance of membership provision continued to divide the members.

In the International Harvester case (Nos. MB 4, 4A, and 89), where the subject again arose, the decision stood 8-4, the employer members dissenting. The same was true in the Federal Shipbuilding case (No. MB 46).

The Escape Provision. In the Ryan Aeronautical case (No. 46), however, Roger D. Lapham, employer member, voted with the majority of the Board. He stated in the separate opinion which he filed:

> "The Directive Order of the Board in this case is noteworthy because for the first time it recognizes one of the main principles the employer members have contended for.
>
> "In simple language, it states that for the next 15 days employee members of the company who are now members of the union may withdraw from the union before the maintenance of membership clause in the agreement between the company and the union becomes effective. Thus, it can and should be made plain to any employee who is a union member that if he is not prepared to remain a member in good standing during the life of the agreement, he should now resign from the union and if his resignation is disputed, be prepared to prove the validity of his resignation before the arbiter appointed by the Board."

In the E-Z Mills case (No. 55), a majority of the employer members joined the unanimous public and labor groups in the support of a provision for a maintenance of union membership.

The Phelps Dodge case (No. 5) was significant, among other things, for the fact that the employer members made the decision on the maintenance of membership provision unanimous. In the case of the S. A. Woods Machine Company (No. 160), they stated clearly their reasons for doing so. In this case, Mr. Davis, the Chairman of the Board, pointed out that the employers had expressed the view that unions should not be granted mainte-

nance of membership clauses unless they were responsible and democratically operated. The public members of the Board, he said, completely agreed with the employer members on this point.

As a result of this development in the thinking of the Board, the maintenance of membership, with the so-called escape and anti-coercion provisions, has become an accepted pattern in dealing with problems involving union security.

That the Board will not hesitate to refuse this provision to unions who have violated the agreement not to strike is shown in the case of the General Chemical Company (No. 267) in Buffalo. In this case the union called a stoppage of work, and though it was of short duration, the Board stated that in so doing it showed that it was not a responsible organization and, therefore, not entitled, for the present at least, to the protection of a union maintenance clause. A similar decision was made by the Board in the case of the Monsanto Chemical Company (No. 292).

It is the expectation of the Board that this stabilization of the unions will liberate all forces in the struggle, so that there can be a united effort for maximum production so vital to the preservation of our common heritage.

WAGES

"Little Steel" Formula. Another question with which the Board has had to wrestle has been that of wages. In the case of "Little Steel" (Nos. 30, 31, 34 and 35), the Board evolved a certain guiding principle which it declared should be applied in evaluating claims for wage increases. It stated:

> "For the period from January 1, 1941, to May, 1942, which followed a long period of relative stability, the cost of living increased by about 15 per cent. If any group of workers averaged less than a 15 per cent increase in hourly wage-rates during or immediately preceding or following this period, their established peacetime standards have been broken. If any group of workers averaged a 15 per cent wage increase or more, their established peacetime standards have been preserved."

This principle has been generally accepted and is referred to as the wage stabilization rule established in the case of "Little Steel."

Elimination of Substandards. The President in his message to the Board asked that consideration be given to the elimination of substandards of living. The Board has declared that a substandard wage is one that does not permit a worker to maintain

a living standard of health and decency. On this point there has been little difference of opinion.

Elimination of Inequalities. The Board was also asked by the President to take into consideration the inequalities in the present wage structure.

In considering this problem, four distinct types of cases have arisen. They are, first, cases of *wage inequality between jobs in the same plant;* [1] second, *wage inequalities between comparable jobs in the same area;* [2] third, *wages for comparable jobs in the same industry.*[3]

The fourth type of case is more far-reaching in its consequences, and of it the Board stated in its public release of September 16th:

> "In this case [that of the 10,000 workers in the copper, lead and zinc industries in Idaho and Utah], the inequalities are of a fourth type . . . . and their consequences are more serious. This fourth type might be defined as *wage disparities between industries competing for the same limited labor supply, which have directly caused an out-migration of labor from one industry to another, of such duration and magnitude as to interfere with vital war production and to present an emergency war problem of national significance.* The words in italic are an exact description of the situation which confronts the country in the case now before us. And the principle logically follows that *if the problem thus created can be solved, or its solution materially aided, by the making of fair wage adjustments, such adjustments are not only proper but are essential in the national interest.*"

This thinking is apparent in the decision of the International Woodworkers of America with the Employers' Negotiating Committee (No. 90).

President's Order of October 3, 1942. On October third the President, in his Executive Order No. 9250, stated:

> "1. Except as modified by this Order, the National War Labor Board shall continue to perform the powers, functions, and duties conferred upon it by Executive Order No. 9017, and the functions of said Board are hereby extended to cover all industries and all employees. The National War Labor Board shall continue to follow the procedures specified in said Executive Order.
>
> "2. The National War Labor Board shall constitute the agency of the Federal Government authorized to carry out the wage policies stated in this Order, or the directives on policy issued by the Director under this Order. The National War Labor Board is further authorized

[1] Cases Nos. 88, MB 67 and 120.
[2] Cases Nos. 43, 46, 156, 157, 155, 145.
[3] Cases Nos. 99 and 246.

to issue such rules and regulations as may be necessary for the speedy determination of the propriety of any wage increases or decreases in accordance with this Order, and to avail itself of the services and facilities of such State and Federal departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the Board."

Action of the National War Labor Board. The National War Labor Board reaffirmed its "Little Steel" wage stabilization policy, and also gave provisional approval to all voluntary wage increases put into effect on or before October 3rd. The Board reserved the right, however, to discontinue further payments of any such increase which it found later to be inconsistent with the Executive Order or with any policy formulated by the Economic Stabilization Director.

The Board also reaffirmed any wage increase which it had granted priod to October 3rd.

JURISDICTION

In the Executive Order of the President establishing the National War Labor Board, it is stated that the Board shall have jurisdiction over "labor disputes which might interrupt work which contributes to the effective prosecution of the war."

The Board, therefore, contends that its authority comes directly from the President and that he has implemented the Board to carry out one of his war time powers. These war time powers of the President, the Board asserts, are governed by the laws of national preservation rather than by the rules of common law.

When in the "Little Steel" case the companies contended that the Board had no authority to act, Wayne L. Morse stated in his decision:

"The Board functions as a war agency. It is directly responsible to the President and obligated to exercise the powers and carry out the policies entrusted to it by the President. The arguments advanced by counsel for the companies questioning the jurisdiction of the Board fail to take into account this fact.

"The objections to the jurisdiction of the Board overlook the fact that there is inherent in the war powers of the President the authority to take such steps as may be necessary to prevent and settle labor disputes which threaten to disrupt the successful prosecution of the war. The President of the United States as Commander-in-Chief of the armed forces of this nation, burdened with the duty of seeing that our armed forces are not only successfully directed but also are adequately supplied with the weapons of war, has by Executive Order entrusted to the National War Labor Board the duty of finally determin-

ing all labor disputes which 'might interrupt work which contributes to the effective prosecution of the war.'

"The Executive Order makes clear that the effect of the dispute upon the war effort and not the subject matter of the dispute is the criterion which determines the Board's jurisdiction. There is no basis for questioning the fact that the several issues involved in the instant case constitute a dispute which threatened the prosecution of the war. The production of steel obviously is vital to our war program.

"It is immaterial that the issues involved in the dispute are over wages and union security. It is immaterial that in peacetime the parties might conceivably be justified in raising some legal objection to the enforcement of an arbitration award of which they do not approve. In wartime, there is no basis for questioning the power of the President to order what amounts to compulsory arbitration for the settlement of any labor dispute, such as the instant one, which threatens the war effort. The President, having entrusted this duty to the National War Labor Board, it follows that those who challenge a decision of the Board, challenge the war powers of the President."

Most of the cases in which the National War Labor Board has assumed jurisdiction involve such industries directly connected with the war effort as steel, machinery, textiles, metal products and shipbuilding.

There are other cases, however, where the connection has not been as apparent. For example, in the case of the Hotel Employers Association of San Francisco (No. 21), the Board stated that it took jurisdiction "largely because of the potential effect of a picket line upon civilian morale"; in the Federated Fishing Boats of New England and New York case (No. 16), the Board declared that an adequate supply of fish was of the utmost importance, not only as a food, but also as a source of certain vitamins and drugs; in the New Orleans Laundrymen's Club case (No. 91), the Board accepted jurisdiction because of "the ramifying effects which a strike of a large number of laundry employees would have on the economic life of an area"; and in Pacific Fruit and Produce Co. case (No. 7) because the situation "endangered not only the preservation of perishable fruit needed by the consuming public, but also influenced boycotts which interfered with the movement of truckloads and cars of apples."

In a wage dispute, the Montgomery Ward Company challenged the Board's jurisdiction. Wayne L. Morse, public member, in speaking for a unanimous Board, declared: "It should be said that the War Labor Board has taken the position that any labor dispute which may properly be adjudged a major dispute—that is, one that in case of a strike or lockout, is bound to affect detri-

mentally both directly and indirectly the daily lives of a large number of people—is one which, in the light of war conditions, falls under the jurisdiction of the Board."

JURISDICTIONAL DISPUTE

A jurisdictional dispute involving the A.F.L. and the C.I.O. was decided by the Chairman of the Board, acting as an arbitrator in the case of Spicer Manufacturing Corp. of Toledo (No. 22).

EQUAL PAY FOR EQUAL WORK

The Board's decisions in the Frank Foundries Corp. case (No. 95) and those of the Brown and Sharpe Manufacturing Co. (No. 101) and the General Motors Corp. (No. 128), established the principle that "female employees hired to perform the same work as performed by male employees" or who, "in comparable jobs, produce work of the same quantity and quality as that produced by men," shall be paid on the basis of the principle of equal pay for equal work.

OVERTIME

In general, the attitude of the Board toward overtime is stated in its decision in the case of the Warner Automotive Parts Division, Borg-Warner Corp. (No. 135), where it says:

> "There shall be no overtime pay for Saturdays, Sundays, or holidays as such. Time and one half shall be paid for work beyond eight hours a day or forty hours a week. Double time shall be paid for work performed on a seventh consecutive day."

ARBITRATION'S PART IN INDUSTRIAL RELATIONS

The Board has shown its belief in arbitration as a means of arriving at agreements and of settling disputes once agreements have been made, not only by its own example in setting up arbitration panels, but also by ordering the inclusion of arbitration provisions in many of its Directive Orders to labor and to management.

Arbitration provisions are included in all the Directive Orders providing for maintenance of membership. The one in the case of "Little Steel," quoted below, is typical:

> "The Union shall promptly furnish to the National War Labor Board and to the Company a notarized list of members in good standing 15 days

after the date of the Directive Order. If any employee named on that list asserts that he withdrew from membership in the Union prior to that date and any dispute arises, the assertion or dispute shall be adjudicated by an arbiter appointed by the National War Labor Board whose decision shall be final and binding upon the Union and the employee.

"The Union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the Union. If any dispute arises . . . . this dispute shall be regarded as a grevance and submitted to the grievance machinery and, if necessary, to the final determination of an arbitrator appointed by the National War Labor Board in the event that the collective bargaining agreement does not provide for arbitration."

The same or very similar provisions appear in the following cases: "Big Steel" (No. 364); Pioneer Gen-E-Motor Co. (No. 220); J. I. Case & Co. (No. 130); Towne Robinson Nut Co. (No. 270); American Can Co. (No. 102); S. A. Woods Machine Co. (No. 160); Federal Shipbuilding and Drydock Co. (No. MB 46); Walker Turner Co. (No. 17); U. S. Rubber Co. (No. 180); Caterpillar Tractor Co. (No. 63); Mack Manufacturing Corp. (No. 76); Warner Automotive Parts Division, Borg-Warner Corp. (No. 135), as well as in several others.

An interesting and far-reaching decision is found in the S. A. Woods Machine Co. case (No. 160), which provides for a three man Board of Arbitration in which one man, the Chairman alone, renders the decision.

"From and after the date of the Directive Order of the National War Labor Board in this case all disputes, differences and grievances between the parties arising under the terms of this agreement, but not including any desired or proposed changes in the terms of this agreement, that shall not have been satisfactorily settled by operation of the grievance procedure provided for in this agreement shall, upon written notification by either party to the other, promptly be submitted to arbitration by a Board of Arbitrators. The Board of Arbitration shall include one member designated by the Union and one member designated by the employer; these designations shall be made within 24 hours after the receipt of the aforesaid notification. These two members of the Board of Arbitration shall attempt to agree upon a third arbitrator who shall serve as Chairman of the Board. Upon their failure to agree within 24 hours from the time of their designation, the Conciliation Service of the United States Department of Labor shall forthwith be requested to designate the third member who shall serve as Chairman of the Board. At the conclusion of the arbitration proceeding the Chairman, after consultation with the other members of the board, shall render a decision and his decision shall be final and

binding upon both parties. The expenses incident to the arbitrator shall be borne equally by the Union and the Company."

The same principle appears in the Board's decision in the case of the Reynolds Metals Co. (No. 193).

Sometimes the Board or one of its panels has recommended certain changes in arbitration provisions in existing contracts, as in the case of the American Brass Co. (No. 131) when:

> "The Panel recommendation in respect to a clause providing for the arbitration of disputes in discharge cases is amended to read as follows: 'In the case of a dispute as to the justice of Company action in a discharge case, the parties will accept the decision of an arbitrator to be named by the Connecticut State Board of Mediation and Arbitration, provided the Union files its appeal to the State Board within three working days from the date of discharge. It is understood that the grievance procedure provided for in the contracts between the parties will not apply to a dispute arising from a discharge case.' "

In the case of the Western Pennsylvania Motor Carriers Association (No. 239), we find the following provision in the grievance machinery which the Board ordered included:

> "In the event any matter cannot be adjusted by the method set forth above, or in case of any other dispute arising under this contract pertaining to its meaning or application, each party shall forthwith name two arbitrators and the four so chosen shall within 48 hours name a neutral arbitrator. If the four do not agree upon a neutral within 48 hours, the Director of the U. S. Conciliation Service shall be requested to name such neutral. The expense of the neutral, if any, shall be shared equally by the parties. Each party agrees to accept and abide by any award made by the majority of the Arbitration Board so constituted."

In the Dallas Manufacturing Co. case (No. 153) the Board ordered the parties to include in their contract the following clause:

> "It is agreed by the parties hereto if changes are made in production of machinery or methods of work, or changes in work loads or work assignments, such changes shall be mutually discussed, and if after ten (10) days no agreement is reached as to the matter, then the Company may at its discretion introduce its proposed changes. If after a trial period of two (2) weeks there are grievances or complaints with reference to the resulting work loads or work assignments, such grievances or complaints shall be mutually discussed, and, if after five (5) days no mutually satisfactory settlement is reached, each party shall select a textile technician, and the two (2) so selected shall seek a settlement of the dispute. If after ten (10) days no agreement has been reached, the two (2) textile technicians so selected shall endeavor to agree upon an arbiter. Failing such agreement both parties agree to request the American Arbitration Association to select a competent person to

act as Arbiter. The decision of the Arbiter shall be final and binding on the parties."

The Board has a number of times ordered arbitration provisions to be included in contracts as the final step in the grievance procedure. This was true in the Caterpillar Tractor Co. case (No. 63) and in the case of the Reynolds Metals Co. (No. 193):

An interesting attitude toward the appreciated need on the part of a union for an arbitration provision in its contract comes to light in the case of the Midland Steel Products Co. (No. 85). In this controversy the union asked that an arbitration provision be added to its contract. This request the Board refused, and explained its refusal by saying that the union should have raised this issue at the time the contract was negotiated, for once the contract was signed it became binding until date of termination. To grant this request would, the Board declared, open the flood gates of new disputes in cases where unions were dissatisfied with existing contracts.

In the case of the Willamette Valley Lumber Operators (No 69), the Board unanimously ordered the arbitration award of Dean Pendleton Howard placed in abeyance pending an investigation by a Board officer, on the ground that the Arbitrator exceeded the terms of reference to arbitration proceedings, in that he handed down an award covering a matter which was not an issue in the case.

The Board recommended arbitration as a means to iron out difficulties encountered in drawing up an agreement in the case of the Bower Roller Bearing Company (No. 12):

"With regard to the Union's demands submitted to this Board relating to the training period for inexperienced employees, wage rates in the tool room and the wage rates to be paid to employees who are transferred from one job or one department to another, either permanently or temporarily, the parties shall enter into immediate negotiations in an endeavor to reach an agreement. If the parties are able to reach an agreement upon any or all of these issues, the agreement shall be incorporated into the contract. If the parties are unable to reach an agreement upon any or all of these issues within fourteen (14) days after the beginning of negotiations, they shall report their failure to this Board; the Board will thereupon appoint an arbitrator to determine the issue or issues still in dispute. The decision of this arbitrator shall be final and binding upon both parties."

A case which aroused special interest is that of the Thermoid Company (No. 115), where two employees had been discharged

and the resulting dispute was certified to the Board. The Board noted with approval that the existing collective bargaining agreement provided for arbitration as the final step for the determination of grievances and recommended that this particular dispute be settled by arbitration as provided.

When the New York, New Jersey Metropolitan Milk Distributers War Conservation Committee case (No. 197) was certified to the Board, it appointed Hugh Sheridan of the trucking industry to settle the dispute. He was ordered to report his findings and recommendations to the Board.

The importance which the Board attaches to arbitration, as a method of maintaining industrial stability and of promoting group responsibility, will be seen from the cases cited. Arbitration is undoubtedly playing an important part in making more articulate both labor and management. The need to define a matter of disagreement and to study the case of the opposing side is an intellectual and not an emotional process. The removing of a controversy from a feeling to a thinking level is in itself a forward step. To understand both sides of a problem, even though one's sympathies are on the one side, means the ability to take a more constructive and hence a more creative part in the settlement of that problem.

CONCLUSION

The President's order of October 3, 1942, closed an era in the work of the National War Labor Board. During this period the Board had jurisdiction only over cases wherein there were disputes, and then only if the disputes threatened to interrupt work vital to the war effort. It is of the cases decided in this period from January 12 to October 3, 1942, that this article deals.

On October 3, 1942, a new chapter opened, for by the President's order the Board on that date had its jurisdiction extended to all industries and to all employees. By this new order, no increases or decreases in wage rates, whether reached by voluntary agreement, arbitration or other means, can be authorized without the consent of the Board. Salaries as well as wages have been brought by this order under the control of the Board.

The next article on the National War Labor Board will deal with the decisions and policies developed in this new era which is just beginning.

VOLUNTARY ARBITRATION AND THE WAR

JOSEPH A. PADWAY *

THE responsibility of American Industry and of the American Worker, not only to this nation but to all free people and to those fighting for freedom, is greater today than it has ever been in our history. Labor has pledged its utmost effort to meet this challenge and to keep the supply of vital war materials flowing in a constant stream to the battlefronts of the world—a world that now looks to the American soldier and sailor in uniform and to the American worker in overalls in our factories to turn the tide to victory for the democracies.

That labor has more than fulfilled its pledge is evidenced by the ever-increasing supply of war materials produced in quantities which constantly are breaking production records. To redeem that pledge labor had to relinquish, for the duration, the right most fundamental and precious to it—the right to strike. President Roosevelt, by executive order, set up the War Labor Board with the authority to make final disposition of disputes affecting war production, either by mediation or arbitration. Labor has faithfully submitted its every controversy, including those involving matters of deepest principle, to this tribunal for decision, and has abided by its decisions.

The functioning of the War Labor Board has brought into prominence the entire question of arbitration. Greatly renewed impetus has been given to the arbitration method of settling labor controversies, and with the challenge to labor to produce untold quantities of war materials without resort to strike has come another challenge to a principle for which labor has always stood firmly—the principle of *voluntary* arbitration as opposed to compulsory arbitration.

The very use of the word "compulsory" in connection with arbitration is a contradiction of its principles and a repudiation

* General Counsel, American Federation of Labor. Mr. Padway's article is reprinted from *Catering Industry Employee* (October, 1942), official journal of the Hotel and Restaurant Employees' International Alliance and Bartenders' International League of America, through the courtesy of the publisher.

of its entire history and practice. To seek to compel arbitration is at once to destroy its voluntary principle and the right of free choice, and amounts to a denial to a party of the right to "due process of law" by eliminating his right to a choice of remedies.

VOLUNTARY ARBITRATION AS SELF-REGULATION

On the other hand, voluntary arbitration constitutes a valuable right of self-regulation. It must not be lost to the nation under the stress of war. It represents a long American tradition and one of the great freedoms for which democracies stand—the right to settle our own differences without coercion or duress, in an amicable and friendly way. It is one of the fundamentals of goodwill and cooperation which will keep and has kept Americans united. It is an integral part of the fundamentals for which we are now fighting. Its essence is *self-regulation.* Voluntary arbitration is the means of attaining and maintaining industrial peace through self-imposed methods.

The President of the United States has ordered that negotiations and existing procedures for settling labor disputes be tried and exhausted before disputes are sent to the War Labor Board. He has asked that arbitration be used before an already overburdened Government is compelled to take over plants involved in disputes that halt production. Thus, emphasis is laid upon adjustment procedures voluntarily adopted by management and labor and upon the fact that they must not wait for disputes to arise to stop production.

While labor has voluntarily submitted its controversies to the War Labor Board and has voluntarily abided by the decisions of that Board, labor's unequivocal no-strike pledge and the President's great powers of enforcement of the War Labor Board's determinations bring the submission of disputes to that Board close to the domain of compulsory arbitration—a domain consistently abhorred by labor from the time of Samuel Gompers to the present as equivalent to involuntary servitude and as carrying industrial problems into politics.

THE DANGER OF COMPULSORY ARBITRATION

One way of avoiding the possible danger of compulsory arbitration, and at the same time of enabling labor to carry out its wartime pledges, would be for labor to make greater use of the

existing arbitration services and facilities afforded either by governmental agencies or by such non-profit organizations as the American Arbitration Association. The use of these facilities, and the submission of controversies to voluntary arbitration, will serve a two-fold purpose. First, it will obviate resort to the War Labor Board and thereby at least quantitatively lessen the danger of compulsion; and second, it will relieve the War Labor Board of the pressure of a great deal of work which might otherwise come to it, and thereby will enable that Board to render decisions in those cases before it much more expeditiously than has previously been possible. One of the principal difficulties confronting the War Labor Board has been the tendency to overwhelm it with controversies of every description, and anything lessening that work burden would constitute a valuable contribution to the war effort.

Voluntary arbitration involves the submission of controversies to agreed upon arbitrators for *final decision.* The question immediately arises: Will management and labor bind themselves in advance to accept and abide by arbitration awards, and will such awards be observed? The answer is "Yes," when both sides have had a fair and impartial trial of the issue. Not infrequently one side or the other seeks a rehearing or reopening of the proceeding, but this cannot be considered a repudiation of the award. For instance, the records of the Industrial Arbitration Tribunal of the American Arbitration Association disclose that of the 800 labor disputes that have been arbitrated under its rules of procedure, in only three cases has one party or the other sought to evade the award by an attack upon it in the courts, and that in each of these cases the award of the arbitrator was confirmed. This record is all the more remarkable when it is known that 114 unions, representing both A. F. of L. and C. I. O. affiliates, have been parties to the arbitration proceedings.

VALIDITY OF ARBITRATION AWARDS

In a number of states laws exist which make valid an agreement to arbitrate a future dispute. In these states the effect has been to increase the number of arbitrations and to stabilize the practice and to increase the efficacy of arbitration.

It is an interesting fact that even in states where no new statute has been enacted or where the arbitration law does not

apply to labor arbitrations, the increase in reliance upon arbitration is quite phenomenal. For the adoption of these laws by some states so increased the knowledge of and confidence in arbitration generally that parties in all states are adopting it in the field of labor arbitrations in the belief that arbitration will work, with or without the backing of appropriate law.

In the last analysis, the success or failure of an arbitration proceeding depends upon the arbitrator more than any other factor. When an arbitrator is conscientious, painstaking and fair in arriving at his decision, and bases that decision upon the proofs submitted; when he brings his competence and common sense to bear impartially and without bias upon the issue before him; when he follows the procedure laid down in the arbitration law and in rules of procedure adopted by the parties and makes each party feel that he has had a fair deal—then arbitration is a proceeding which commands confidence, and the award is one that satisfies justice.

IMPARTIAL FACILITIES AVAILABLE

Today, in the midst of war, the office of arbitrator is one which affects not only the immediate interests of the parties, but may vitally affect war contracts. An arbitrator's decision, therefore, may halt industry or speed up its work; it may build goodwill and good faith, or it may open new seams to dissension. Nothing is, therefore, more important than to know how to select good arbitrators or how to keep them free from bias, partiality or misconduct while in office, and nothing is of such vital significance as fixing their duties and powers, setting standards and assuring to parties panels of arbitrators who will perform their obligations faithfully and fairly.

The record of the American Arbitration Association is proof that good, mutually acceptable arbitrators can be obtained by a careful and intelligent process of selection. Its labor panel contains no persons identified either with management or unions. Its members—educators, economists, accountants, lawyers and men in like professions—are carefully checked before inclusion on the panel, and they are enlisted on an honorary basis and serve without compensation. The parties themselves choose the arbitrator or arbitrators who will serve in their particular case from an identical list submitted to each for such purpose, and so they have

the right of challenging and rejecting any names submitted. There is the added standard under the American Arbitration Association Rules that its arbitrators are free from politics and from the hope for political gain, and that they serve without personal gain either through remuneration, publicity or any other award. Thus, complete impartiality, or at least as close to complete impartiality as it is possible for human beings to attain, is achieved, first, by the fact that the arbitrators are carefully selected with regard to their background and predilections, and second, by the fact that the arbitrators are paid not one cent of salary, but instead, that their services are volunteered as a social contribution to the well-being of the community. The standards and methods of selection of arbitrators of the American Arbitration Association may well serve as a model to supplement existing state and federal procedure. Where impartiality and fairness are assured, voluntary submission to final settlement may be preferable to submission to the War Labor Board, because the element of compulsion, of involuntary submission to final settlement, is not present; and in times of peace it may be preferable to a strike because often the costs of a strike are far greater than the advantages secured or which could be secured through voluntary submission to arbitrators in which labor can have faith.

The war has already given, and will undoubtedly continue increasingly to give, impetus to the entire principle of voluntary arbitration, and it is certain that the use of that method of settling labor disputes will become greatly more prevalent than in the past. Therefore, it behooves labor organizations to familiarize themselves with the principles and procedure of voluntary arbitration.

REVIEW OF TRIBUNAL ACTIVITIES

COMMERCIAL ARBITRATION TRIBUNAL

WORLD War II has brought in its wake many conditions, some of them not heretofore encountered in our economic life, that lead to differences, some affecting private lives of individuals, others the transactions of large and small business organizations. All of them, however, are in urgent need of adjustment at a time when any unsettled dispute or grievance is a threat to national unity and cooperation so vital to a nation in wartime. The increase in these problems is reflected in the growth in the number of matters referred to the Commercial Arbitration Tribunal of the American Arbitration Association—a rise of 18 per cent in the first nine months of 1942 as compared with a corresponding period last year.

There follow some typical matters taken from the records of the Tribunal, indicating the wide variety of the grievances that have recently found their way into the Tribunal:

Sale of War Plant. Subsequent to the freezing of raw silk supplies by the United States Government, a Pennsylvania company manufacturing silk products decided to close its business and put its extensive property on the market, hoping to dispose of it to one of the companies engaged in expanding war production. The plant was placed in the hands of a company specializing in this type of property, under an agreement calling for definite commissions, allowances for expenses, etc.

The property was actually sold, however, by another agent two weeks after the agreement between the parties had been terminated on April 15 by written notice from the owner to the agent, although the latter claimed to have received at that time verbal instructions to proceed with any client that might be interested. The eventual purchaser was claimed by the agent to have been a former client of his, to whom the property in question was offered in February.

The board of arbitrators, consisting of an accountant, an executive of a real estate company and a manufacturer of textiles, awarded the agent one-third of the amount claimed to be due in commissions ($9,375), plus printing and traveling expenses incurred in his efforts to sell the property.

Defective Deliveries under a Government Contract. A firm having a prime contract with the U. S. Ordnance Department entered into a sub-contract with another firm, under which the latter was to manufacture and deliver shirts to the U. S. Army in accordance with a

definite delivery schedule. Because of late deliveries and alleged defective quality, the prime contractor was assessed penalties of several thousand dollars and, in addition, was obliged to pay $400 in freight charges for the return of defective garments, a claim for which was made by the contractor on the sub-contractor.

The latter denied liability on the ground that the prime contractor had failed to supply shirting material sufficiently in advance of the delivery dates to enable it to comply with the contract, and also claimed an understanding with the contractor under which the sub-contractor was to handle any and all complaints which might arise, its position being that if this agreement had been adhered to it could have avoided the rejections which caused the extra freight charges as well as the penalties.

The award of the arbitrators upheld the claim of the contractor and assessed the damages against the sub-contractor.

Easing Financial Hardships under a Separation Agreement. When one of the parties to a separation agreement was ordered into active duty with the U. S. Naval Reserve, the question of the extent of the modification of payments made under the agreement between him and his former wife arose. The change in husband's financial circumstances by reason of his active duty and the giving up his practice as a neurologist was alleged to be such as to prevent continued maintenance payments to the wife and child on the scale contemplated by the agreement between them.

The testimony given at the hearings centered around the present and possible future income of both husband and wife, and since the former had been ordered to the West Coast, his testimony was accepted in affidavit form. Upon the basis of the evidence presented, the arbitrator ruled that the monthly payments made by the husband be reduced from $350 to $200, plus an amount equal to one-half of any increase in base pay or allowances by reason of sea duty, change in rank or otherwise, and one-half of all other income received in future by the husband, including payments from doctors to whom he had turned over his private practice.

Protection of Refugee's Interests. A French woman in New York engaged a man representing himself as being a *bona fide* agent to attend to all matters necessary in obtaining passage to this country, via Lisbon, for her husband, a French citizen then in Nice, paying to the agent approximately $2,000 to be used for steamship or airplane tickets, cables and other incidental expenses. Deposits for airplane passage were made, but later cancelled when the wife received word from Paris that her husband had been able to make his own reservations and arrangements to get to the United States. The agent refused to return any part of the money paid to him on the ground that his expenditures had been in excess of that amount, and claimed the sum of $3,000 to be due him for his efforts. An action was commenced in the City Court of the City of New York by the wife, but was discontinued upon the signing of the arbitration agreement.

Through testimony introduced at the hearing, it was shown that the man representing himself as a *bona fide* agent was, in fact, not such an agent, and the implication made before the arbitrator was that he was taking advantage of the wife's desire to secure her husband's safe arrival in America at any cost. During the course of the hearing, counsel for the parties reached an agreement upon the terms of a settlement which, at the request of the parties, was embodied in a consent award signed by the arbitrator, who in this case was a former Assistant District Attorney. Under the terms of the settlement the claimant secured the refund of practically the full amount of her claim.

Restoration of Rights to Inventor. A former European, at one time engaged in Vienna in the manufacture of a certain product used in the furniture trade and later in demand in war production, entered into an agreement with two individuals in New York to form a corporation for the manufacture and sale of this product, under which the latter were to give part of their time and certain funds, and the inventor was to give his entire time to the business. The agreement specified that only in the event the inventor should be removed as a director of the corporation for reasons other than his own misconduct or fault would he be entitled to the return of all trade names, formulas, processes, etc.

The complainant, the inventor of the process, claimed that although he fully performed all of his responsibilities under the contract, the partners breached the agreement, removed him without cause and refused to allow him to enter the premises of the company. For this reason he demanded the return of his rights and property and the barring of the use of the trade name to the defendant corporation and permission to incorporate the name in that of any firm or corporation he might thereafter form. A further claim for salary alleged to be due and for damages was made.

The defending party contended that the product as prepared under claimant's direction was not commercially salable, could not compete with American-made products and did not meet the requirements of the industries using it, and testified that claimant was stubborn, unprogressive and refused to cooperate in improving the product to meet competition, and that he was therefore removed because of his own fault and misconduct.

The board of arbitrators, while denying the inventor's claim to damages and salary, awarded him sole right and title in the trade marks and trade names and all symbols, formulas, processes, etc., also granting his demand for the right to use the trade name and denying its further use by the corporation.

Losses on Shipments from Japan. An aftermath of the war was a claim by a New York manufacturer against the U. S. agent of a Japanese exporting company for failure to deliver 100 bales of cotton goods. The contract specified equal shipments in May and June, 1941, via the Panama Canal. When, on July 10, 1941, the Government closed the Canal to Japanese ships, the contract was modified to permit goods to be delivered to the Pacific Coast and transported thence by rail. Buyer

claimed the two shipments should have left Japan by May 31 and June 30, respectively, in which event delivery would have been possible before the difficulties in shipping and lack of available steamers had occurred. When subsequently notified by exporter that the order was cancelled, buyer refused to accept cancellation, and claimed to have been definitely informed only on July 26 that it would not receive the goods. At that time they were forced to go into the open market to take care of their orders, as a result of which they suffered damages in the amount of $4,050.

Exporter's defense was based on *force majeure* and the clause in its contract allowing fifteen days' leeway on shipping dates, the contention being that it had until June 15 and July 15, respectively, to make shipments, and that the goods were actually purchased and shipped from Japan by those dates, in spite of difficulties in obtaining steamer space. When, however, on July 26 the United States Government issued the freezing order, the steamers bearing the shipments were ordered back to Japan and unloaded, while those which arrived were held in the international zone and only two were allowed to dock on the West Coast.

A board of arbitrators consisting of New York businessmen decided in favor of the exporter and denied the claim for damages of the New York manufacturer.

INDUSTRIAL ARBITRATION TRIBUNAL

To the Industrial Arbitration Tribunal has come, in the first nine months of 1942, an increase of 88 per cent in the number of matters submitted, over a corresponding period last year. Much of this increase is due to growing demands for adjustment of wages and conditions of employment, under collective bargaining agreements, growing out of the war production expansion. Approximately 44 per cent of the grievances submitted to the Tribunal in September, for example, concerned wage increases. Many cases, however, do not concern wages but reflect underlying conditions of the strain and urgency under which men work, and these also demand prompt adjustment if delays and stoppages are to be avoided. The following cases are in the nature of a cross-section of such matters:

Effect of Shortage of Goods on Basic Crew. Employer's business underwent a radical change, due to shortage of goods because of the war program. In the transition from a retail to a wholesale business, many economies—in office force, telephone equipment, type of quarters, etc.—were effected. Basic crew of ten established by the contract were not kept busy, and Employer requested a reduction from ten to two men, and the privilege of retaining one man, an examiner, who was fifth in seniority. While the Union admitted the general claim of Employer, it insisted that any reduction in basic crew be made strictly on a seniority basis.

Arbitrator, in allowing reduction of basic crew from ten to two, ordered it to be chosen in order of seniority, without regard to the nature of duties to be assigned.

Discharge for Violence Outside of Plant. A strike at a war industries plant employing 400 workers created considerable ill feeling between the evenly divided non-striking workers and the striking Union members. Following settlement of the strike, Employer's efforts to promote good relationships failed in the case of two workers (one of whom had remained at work during the strike) and whose enmity was of long standing. Continued ill feeling and threats of violence culminated in a clash, outside of the plant, in which the Union member is alleged to have leaped from an automobile and assaulted and stabbed his fellow worker. The former, and the driver of the car, also a Union member, were arrested on criminal charges, and their lay-off by Employer followed. The Union claimed the assault was a personal matter, due to a long-standing personal grudge and had no relation to the strike, and that the Employer had no right to discharge the two men. Employer contended the lay-off was temporary and expressed willingness to reinstate them if they were found to be not guilty at their trial.

Arbitrator sustained the contention of the Union that the discharge of the two Union members was not justified, and ordered their reinstatement.

Discharge for Display of Nazi Emblems. When a work crew returned from lunch, shortly after a strike in a defense plant, a swastika and a picture of Hitler were found attached to the machine of a worker of foreign parentage, and circumstances connected with the episode led to his discharge, the justification of which the Union demanded be submitted to arbitration. Employer's position was that the worker was a disturbing element, and claimed—but could not prove—that the worker himself had put the emblems on his machine and had put similar emblems on other machines, indicating a sympathy for the Nazi movement, out of place in a plant producing war materials, as evidenced by his refusal to remove the posters upon the foreman's order to do so. The employee denied having been ordered to remove the posters or having labeled other machines, testifying that he allowed them to remain to show his unconcern, as a method of stopping what had been a repeated annoyance, which he considered to be ill natured "kidding." He further disclaimed any affiliation or sympathy with Nazi or Fascist movements.

The Arbitrator sustained the Union's claim that the worker's discharge was not justified and ordered his reinstatement.

Discharge for Intoxication. An employee was charged with being intoxicated while on duty and was discharged, after examination by a physician who was also an officer of the Company. Upon the Union's demand the matter of the justification of the discharge was submitted to arbitration under a clause in the contract. The employee and several fellow workers testified that he was not intoxicated, but ill and suffering from a severe cold possibly brought on by duties which required

the worker involved to go from a room under refrigeration into the open air. The examining physician admitted that his examination had not been made with sufficient care to determine whether the worker was ill, since he undoubtedly had been drinking.

The Arbitrator decided that from the evidence presented the worker had been suffering from both illness and alcoholism, the latter state having been induced by the illness, and that Employer erred in discharging him, since his inability to work had not been caused by intoxication *per se*.

Decline of Business not a "Change in Policy." Employer laid the discharge of a worker to a falling off in business, under a clause in the labor contract that provided that an employee could be discharged with four weeks' notice if there was a "change in policy," and to the fact that a crew of ten was no longer necessary. Company, however, failed to establish the fact that business had sufficiently declined to warrant this step. On the other hand, the Union produced evidence to the effect that there had been four changes in executive management in the past year, the last manager having taken a marked personal dislike to the discharged employee, the quality of whose work had improved steadily over a five-year period.

The decision of the Arbitrators was in favor of the Union upon the ground that clause in the contract must be construed to give meaning to the words "of policy" and that the changes made by the Employer did not constitute "a bona fide change of policy" requiring adjustment of staff. Reinstatement of employee, with full back pay, was ordered.

Discharge Due to Stabbing Affray. During some "horse-play" which followed the playing of a practical joke upon a worker by his fellow workers, the victim of the joke stabbed another employee with an ice-pick, which was part of the workers' equipment. For this act, and on his past record (which included the striking of another employee during working hours and, on another occasion, the smashing of some equipment in a fit of temper), the worker was discharged. The Shop Committee concurred with the Employer in the discharge. At a subsequent meeting of the Union, however, a majority vote of the entire membership favored reinstatement, which the Union then sought and the Employer refused.

The Arbitrator's decision was that the discharge of the worker was justified and was not unfair or unreasonable.

Removal of Plant and Obligation to Workers. The Union claimed a breach of its contract with the Employer in the discharge of four men, under the following circumstances: Employer operated a main plant in Providence and another in New York City. Due to Company's concentration on war production and discontinuance of other activities, the plants were consolidated and the New York plant removed to Providence. Trucks in New York were sold to a New Jersey concern, with the recommendation that the two drivers and helpers (the four men concerned) be given employment. The workers were so advised, but when they reported to the new concern they were advised there was no work

for them. The Union contended that a definite promise of work had been given and demanded damages in an amount to be determined by the Arbitrator, if there had been a breach of contract.

The Arbitrator awarded that the contract between Employer and Union did not contain any provision guaranteeing full-time employment to workers covered by it nor give a basis for paying the four employees wages in full for the unexpired period of the contract. However, the assurances seemingly given by Employer to the four workers created an obligation which was not met by the peremptory discharge of the men, nor was proper notice given the Union so as to enable them to take any desired action. For this reason it was ruled that the Company should reimburse each of the four men for full salaries for a period of two weeks.

Failure to Pay Initiation Fee. The Union demanded the discharge of an employee under the terms of a labor agreement which required all employees to join the Union and new employees to become Union members after four weeks employment, and all to remain members in good standing. The employee involved in the dispute signed membership application and regularly paid dues thereafter, but did not complete payment of his initiation fee after his initial deposit. The Union had never furnished him with a Union card and claimed the worker was not in good standing. The Employer, satisfied with the worker's services, contended that an obligation to investigate the Union's problems did not rest upon him and that he could do no more than urge the worker to join the Union.

The Arbitrator decided that the Employer was obligated to discharge the worker as not in good standing, and held that determination of what constitutes "good standing" is not within Employer's power, but rests upon the Union alone.

Refusal to Issue Work Card to Employee. Employer claimed that the Union violated its agreement by a refusal to issue a work card to a worker, engaged upon the alleged failure of the Union to provide a satisfactory man for the job, upon whose immediate employment the continued work of a number of other employees depended. The Employer testified that following repeated requests to the Union, several applicants were sent by the Union, none of whom proved to be satisfactory. Additional applicants promised by the Union did not materialize, whereupon the Employer got in touch with an agency and a satisfactory worker was hired. Informed of this, the Union requested the worker be sent for his work card. This was done. He failed to show up for several days and later appeared without a work card and informed his employer that he "did not want to cause any trouble" and decided to make no further attempts to secure a card or to keep his job. The Union admitted refusing the card and claimed that it should have been issued before the worker was tried out by the Employer, insisting that the Employer was obligated to employ only Union members under the terms of the contract.

The Arbitrator upheld the contention of the Employer that the Union had violated the terms of the contract in refusing to issue a work card to the employee in question and that the Union was obligated to issue the card upon the worker's request.

Increase Denied on Basis of "Change in Currency Values." The Union requested an opening of wage discussions under a clause in its contract with Employer that provided: "Should there come about, during the life of this agreement, *a radical change of currency values such as would make necessary a material readjustment in the national currency,* the wage schedule should be taken up for a discussion as an emergency matter." The Union admitted having suggested the wording of this section.

Employer conceded a rise in living costs, but contended a radical change in currency values or readjustment of national currency had not occurred, and claimed (and the Union admitted) that its present wage scale was the highest in the industry, a fact which had caused it to lose a number of Government contracts for which it must bid on a cost basis. The Union contended there had been at least a 5 per cent increase in the cost of living, an increased burden of taxes, with the present dollar buying much less than at the time the contract was negotiated, and that in comparison with the workers' earnings such an increase was definitely "radical."

The Arbitrator's award on the question submitted was that there had not been a radical change of currency values such as would make necessary a material readjustment in the national currency, and directed that the Union withdraw its demand for a wage negotiation at the present time. In transmitting his award, the Arbitrator indicated that a different decision might have been made on the question of whether there had been such a rise in living costs as to warrant opening wage increase discussions, but that his authority was determined by the phraseology used in the contract.

INTER-AMERICAN TRADE ADJUSTMENTS

When the Inter-American Commercial Arbitration Commission was established in 1933, this group supplied a missing link to inter-American peace and bulwarked inter-American defense.

With the later establishment of the Commission's Inter-American Business Relations Committee, a method was provided to clear trade routes of existing disputes, to restore confidence shattered by trade misunderstandings and to promote goodwill impaired by difficulties of language, distances, transportation, government regulations and other interferences with the free flow of commerce.

In the following brief summary of some of the two hundred or more matters that have come before it, the Commission presents

a picture of the kinds of questions and differences that arise, how they complicate the flow of goodwill and of goods from market to market, and of the negotiations and collaboration necessary to dispose of them in an amicable and satisfactory way. These cases demonstrate that a so-called trivial dispute, involving perhaps only a few dollars, may be as disruptive of amicable trade relations as one involving thousands of dollars:

Clearing of Shipment. An order for metal tubing was placed with a New York manufacturer in the amount of $275,000, with a time limit upon its shipment. Through failure to fix a date upon which a letter of credit would be delivered by buyer, seller was in danger of losing the order upon expiration of time limit. Through the facilities of the Commission in Buenos Aires, the situation was cleared, letter of credit was received in New York and shipment was made within contract limitations. (New York City and Buenos Aires.)

Quality of Merchandise Too High. A shipment of too high a quality resulted in a claim upon a New York exporter, when 100 drums of 100 per cent benzol were shipped instead of 90 per cent benzol specified in the contract. Customer demanded reimbursement for cost of dilution and of fines for incorrect customs statement. The Commission communicated with shipper, who offered to send a further shipment of inferior benzol to be combined with first lot to produce the desired quality and lower customs duties. When this offer was rejected, shipper offered a settlement of $50, which was also refused. Shipper thereupon sent customer a check in the total amount of his claim, which was $115.57. (Buenos Aires and New York City.)

Withholding of Commission. An Argentine firm withheld $2,500 commission from a U. S. wool broker, allegedly upon the order of the Argentine Exchange Control Commission, on the ground that the broker had misrepresented the amount of his principal's offer for 250,000 pounds of wool. The Commission, through its Argentine Committee, was able to clear up the misapprehensions and misunderstandings of the parties, with the result that the exporter forwarded a check in full to the U. S. broker. (Boston and Buenos Aires.)

Failure to Meet Contract Specifications. 44,000 kilos of black iron sheets were alleged to have been shipped in sizes which, in only a small percentage, met the specifications of the contract. When the result of a survey made by the local Chamber of Commerce was forwarded to the shipper and a request made to the Commission to try to adjust the matter, a conference with the exporter revealed that the deviations in size were the fault of the latter's supplier. Shipper's goodwill was demonstrated by his agreement to relieve the customer of any responsibility for paying for the shipment and to dispose of it elsewhere, depositing $1,500 with the Royal Bank of Canada as a guarantee against loss by the importer. Upon this basis the matter was amicably adjusted. (Sao Paulo and New York City.)

Diverted Shipment of Crude Platinum. A shipment of crude platinum destined for Japan was halted in San Francisco by the Government's ban on its export, and its Colombian source had it shipped to an Eastern refinery under an arrangement calling for payment for content and commission at rates prevailing at time of settlement. The shipper made a claim that payment was made on basis of $28 for platinum and $100 for iridium per troy oz., whereas current prices were $35 and $195 respectively. Refinery's position was that the latter prices were those for new platinum in sheet or bar form, in pure state ready for user's requirements, and he submitted evidence of what other refineries were paying for these materials on the date in question. He further claimed that, due to the Government's embargo, this was one of the first platinum sales made in this country from South America for some time, since the firms in this business were accustomed to getting high prices from Germany and Japan, to which most of their crude platinum had been going. As the documents submitted by the refinery bore out its contention, the case was closed. (Condoto, Colombia and Boston.)

Non-Delivery of Small Order. A Better Business Bureau, a Chamber of Commerce, the publisher of an export trade magazine and the Foreign Service of the United States were all concerned in a recent claim of a San Jose importer who had failed to obtain delivery of two dozen pairs of water-wings for which payment of $4.50 had been made, as all of these groups had been appealed to by the aggrieved party in his efforts to obtain satisfaction. When the matter was referred to the Commission it was learned that the firm making the goods had discontinued business and its affairs were in process of liquidation. After considerable correspondence and effort in the matter, a check in the amount of $4.50 was forwarded to the customer. (San Jose and Hoboken, N. J.)

Shipment Delayed by Metals Scarcity. The scarcity of metal goods and Government priorities were responsible for a complaint made by a South American customer that a New York exporter had failed to complete a shipment of needles for which remittance had been made and had charged higher prices than those quoted. The exporter's position was that their factory could not keep pace with orders even for domestic trade and that the export order had been accepted for delivery as soon as possible. In view of customer's claim, however, and the uncertainty of date of shipment, exporter returned customer's unexpended credit balance plus the difference between prices quoted and those invoiced on shipments already made. (Cartago, Costa Rica and New York City.)

A Housewife's Loss Affects a Community. A housewife accepted an offer made by a Cleveland export firm to secure orders for a specified number of household articles, in return for which she was to receive a prize such as she might select from a specified list. Having secured the required orders, a draft for the required amount was forwarded, with her designation of the prize desired. No acknowledgment, no delivery of orders and no prize proved forthcoming, and the housewife, unable to make financial restitution to her friends, appealed to U. S. Government officials in her country, who in turn referred her to the Commis-

sion. Upon taking the matter up with the Cleveland firm it was learned that due to the war the company had been forced to discontinue doing business and was insolvent at the time of its liquidation, with no merchandise and no cash with which to make good the loss of the customer in Costa Rica. (Puntarenas, Costa Rica and Cleveland.)

Failure to Deliver Due to War Production. A lack of understanding on the part of some Latin American customers of the difficulties confronting U. S. manufacturers arising out of the war effort was blamed by the manufacturer for complaints received regarding the non-delivery of certain electrical equipment made to order for the customer's special requirements. The wartime rule of the manufacturer not to accept such orders because of difficulties in manufacture was waived in this case for an old customer. Failure to receive the goods led to the matter being referred to the Commission, which was able to secure the cooperation of the manufacturer in expediting the completion of the goods and their eventual shipment. (Cienfuegos, Cuba and New York City.)

Disputed Quality of Raw Wool. Ecuadorean raw wool that was sold on a contract basis to yield 40 per cent, was alleged to have had an actual yield of only 27 per cent, according to scouring tests made in New York City, and the importer claimed an allowance of $2,000 on the first shipment to cover this deficiency. On the other hand, shipper claimed that if the wool had been examined immediately upon arrival, as specified, a report would have been received within four weeks, and that actually this report was not rendered until nine weeks had passed, or after further shipments had been made under the contract, and he asserted a counter-claim of $1,800. The differences were further complicated by personal relations and transactions between members of the two firms, and in the course of arranging for an arbitration the parties decided in favor of a private settlement in lieu of an arbitration proceeding. (New York City and Quito.)

Death of Party Snarls a Transaction. An arrangement was entered into by a woman in Ecuador and a N. Y. business man under which the latter purchased a considerable quantity of alligator skins to be shipped at different times by the exporter. Deliveries were made, but eventually all communications from the U. S. ceased and the exporter, unable to get replies to her cables and letters, appealed to the Commission for assistance. The Commission learned that several months previously the importer had died after a prolonged illness, during which time his business affairs were neglected, but that the widow was taking over the business. In the course of getting her late husband's affairs in order she resumed negotiations with the exporter and proceeded to adjust outstanding claims. (Guayaquil and New York City.)

War Orders Again Delay Delivery. An order for optical goods, accompanied by remittance, remained unfilled and the assistance of the Commission was sought by the customer in Ecuador in obtaining delivery or the return of his money. Upon taking the matter up in the United States, the Commission learned that the firm concerned had been so

deluged with Government war orders that all other work had been necessarily delayed. However, through a reorganization of the firm's export facilities, the situation was improved, and an immediate shipment of the goods was made. (Guayaquil and Providence.)

Change in Hospital Administration Delays Payment. A shipment of 48 blood plasma flasks and stoppers was sent to a civil hospital in Monterrey and remained unpaid for, although proof of their arrival was in the possession of the shipper. Letters to the hospital remained unanswered, and the claim was referred to the Commission, which in turn sought the assistance of its Committee in Mexico. Upon investigation it was learned that there had been a change in the administration of the hospital at about the time the shipment was made and the papers relating to the transaction had been misplaced. Upon this discovery draft in payment of the account, with an apology for its delay, was immediately transmitted. (Metuchen, N. J. and Monterrey.)

International Agreement Delays Payment of Commissions. The collection of commissions claimed to have been earned by an agent of a Philadelphia firm was affected by two factors—the policy of the principal in the U. S. and an international agreement. When the claim for $171.50 was referred to the Commission, investigation disclosed that the manufacturer's policy, known to the agent, was that no commissions would be paid until full reimbursement for each shipment had been received. To further complicate the situation, subsequent to the transactions it was necessary for the National Foreign Trade Council and the Republic of Nicaragua, due to exchange difficulties, to effect an agreement whereby obligations were to be settled by notes over a period of eight years. Under these conditions, the manufacturer had not yet received full reimbursement for its shipments, and it held the commissions not to be due. In this particular case, however, it had made an exception and advanced the agent $200 against commissions outstanding, with the assurance that the balance would be liquidated at the earliest possible moment. (Managua and Philadelphia.)

WARTIME ACTIVITIES OF THE AMERICAN ARBITRATION ASSOCIATION

THE first nine months of the war have seen arbitration matching strides with increased production and the swift tempo of the war effort, doing its part in the job of keeping production lines moving and goods traveling uninterruptedly to their wartime destinations.

More than ever it is speed that counts, and every dispute promptly settled means a lessening of the danger of slowing down the wheels of industry or of creating ill-will and disunity, regardless of the branch of trade in which the dispute arises.

Arbitration agencies throughout the country have been operating full time for many months. The following is a brief record of the wartime activities of the American Arbitration Association—the only one of these agencies that deals with all types of controversies, including labor, commercial and civil disputes.

Arbitration Outposts. At the outbreak of the war, the Association had 1,600 "outposts" distributed over every state in the Union, in which more than 7,000 "peace officers" or volunteer arbitrators had been recruited from the top ranks of industry, labor, the bar and other professions. Despite the demands made upon their services by the armed forces and the many Government agencies, this group has not only been maintained at full strength, but has been augmented as needs arose at new points where the expansion of industry threatened to create an unusual number of labor or commercial disputes.

Arbitration Pipelines. Thirty branch offices have been kept fully manned and in a high state of efficiency, despite similar difficulties caused by the war's increased demands for manpower. Through these branches, arbitration has been "piped" into innumerable communities and war plants.

United Attack on Disputes. One wartime objective of the association, non-partisan and disinterested, has been to bring the four most vitally interested groups—labor, management, the public interest and government—into a united front on labor disputes, to attack the menace of unsettled grievances which may threaten to divide or defeat our all-out war effort. Preliminary conferences have been held at the common meeting ground provided by the Association's quarters; impartial arbitrators serving great industries have been enlisted in the effort, and out of this initial plan-

ning has been created the Industrial Relations and Arbitration Conference, which will coordinate efforts to use arbitration and other means of voluntary settlement to their fullest possible extent in the war program and the post-war reconstruction period.

War Labor Board Decisions. An endeavor has been made to bring to management and labor full knowledge of the emerging pattern of the decisions of the National War Labor Board and their effect upon industrial relations. These decisions have been analyzed and summarized as they relate to the foremost economic questions of the moment—wages, maintenance of union membership, equal pay for equal work, etc. A complete report on them appears in this issue of the ARBITRATION JOURNAL.

Simplified Rules for Wartime. The Rules of the Voluntary Labor Arbitration Tribunal have been simplified and shorn of all technical provisions and legal phraseology, to make them more nearly meet the needs of wartime labor demands for simple procedure and standard practice throughout the country. In this revision the Association has had the collaboration of representatives of management, labor and the public. The revised Rules, together with a Manual on How to Use the Rules, are now available.

Management-Labor Participation on Panels. Panels of Labor Arbitrators have been over-hauled and augmented, with an extension of the Association's so-called "Cleveland Plan." That plan put into effect a more direct participation of industry and labor in setting up labor panels. Nominations were secured from management and checked by labor to remove any objectionable names, and labor's nominations were likewise checked by management for the same purpose. The result: a pre-tried and pre-checked group of men from which arbitrators can be agreed upon without difficulty.

Supplying Need for Specialists. Special groups or classes of arbitrators have been added to the Panel as needs arose. For example, a number of disputes recently referred to the Association involved the making of time studies and the selection of arbitrators familiar with this highly specialized subject. To provide such men, nominations of a number of time study engineers were secured and checked. Those having the required qualifications were added to the Panel.

Expansion. The activities of the Labor Tribunal, as reflected in the number of disputes referred for arbitration, have increased in the first nine months of 1942 by 88 per cent over the same period in 1941. . . . . In the month of September, management-labor cases have been referred by parties in Bethlehem and Hershey, Pa.; Jersey City and Trenton, N. J.; Milwaukee, Cincinnati, Chicago, Los Angeles; Whitesboro, N. Y.; Charlotte and Durham, N. C.; Shelton, Conn.; Boston, Salem, East Boston and New Bedford, Mass.

Education. An average of two hundred calls a month have been made by branch managers upon management and labor groups and individuals, to acquaint them with the available facilities for voluntary arbitration. . . . . Some 200 firms having management-labor committees and 500 firms in the heavy industries not having such committees have been provided from central headquarters with literature on voluntary arbitration, arbitration clauses and standards of practice. . . . . Similar material has been placed in the hands of two thousand companies holding war contracts, and the leading unions throughout the country. This educational work is carried on through the War Service Committee of the Association, organized in the spring of 1942.

Pre-Arbitration Assistance. Daily the Association receives appeals from parties involved in labor disputes that have not yet reached the point of arbitration or in which they do not wish to proceed to arbitrate under the rules of any organization, to provide lists of qualified men who may be called upon to act with the parties in reaching a settlement or adjustment of their difficulties.

Cooperation with Government Agencies. The Association has been happy to cooperate with the National War Labor Board in providing hearing rooms and facilities in New York for a number of arbitration sessions of the Board, and has placed the facilities of its thirty branches at the Board's disposal. . . . . When the Department of Justice set up Alien Enemy Hearing Boards, to determine questions affecting suspected aliens, the Association had the privilege of submitting to the Attorney General names of impartial and competent persons from its Panels who would be available for such service. . . . . A similar privilege occurred when the Office of Price Administration asked the Association to provide the names of men who could be enlisted to serve in cases appealed to the New York County War Rationing Board.

Continuing its collaboration with the Department of Justice, the Association has, for a second year, administered the Motion Picture Arbitration System under the Consent Decree in the Motion Picture Industry. . . . . Through arbitration clauses inserted in contracts let by the Reconstruction Finance Corporation and the United States Maritime Commission, the Association's arbitration machinery has been placed at the disposal of the parties to contracts involving billions of dollars.

Other Aid to the War Effort. Apart from the role arbitration has played in labor disputes, it has come to the aid of innumerable parties involved in commercial controversies, for many of these, too, concern the war effort. Shipments under contracts for the manufacture of uniforms and equipment for the armed forces have been speeded by an early settlement of disputes. Controversies arising as a result of priorities and scarcities of materials and their effect on deliveries; fluctuations in market prices resulting in failures to make deliveries or in rejection of goods ordered; the liquidation

of businesses as a result of war conditions; personal differences arising under separation agreements due to changed economic status; an increasing number of disputes concerning patents—these and similar matters have arisen during the war period in increasing numbers, and have been referred to the Association.

Our Allies, too, have enlisted the protection of arbitration for their purchases in this country. The British Purchasing Commission uses the Association's clause in its purchase contracts. It is also used by the Australian and Canadian Commissions, by the Soviet purchasing agency in New York and by the Swedish Government.

In some instances arbitration serves an entire industry engaged in war production. When, for example, the Washing Machine Industry was converted to the manufacture of anti-aircraft gun parts, arbitration clauses naming the Association were written into the standard form of contract used in the industry. . . . . The air transport industry in the United States, comprising the fifteen leading commercial airlines in the country, continued in 1942 the system of arbitration set up and administered by the Association.

Accident Claims. When the Tribunal to arbitrate personal injury and property damage claims was set up in New York in 1933, it was in the nature of an experiment, in which casualty insurance companies, plaintiffs' attorneys, the President Justice of the Municipal Court and the Superintendent of Insurance collaborated with the Association. The submission of 12,000 accident claims to the Tribunal for arbitration is proof of its success. With law offices and the courts undermanned due to the war and with parties and witnesses going into the armed forces or moving to defense plants, the saving of time in the settlement of these claims is more important than ever. In September the plan was extended to six additional cities—Boston, Chicago, Detroit, Newark, N. J., Philadelphia and St. Louis, under the auspices of a Committee representing the Association of Casualty and Surety Executives and the American Mutual Alliance.

Recording Arbitration in Wartime. Not the least important of the tasks which the Association has set itself is to record arbitration in wartime, in all of its activities—commercal, labor, inter-American, international—for nowhere else and by no other organization is a continuous record of the thought, opinion and activity in arbitration being kept. . . . . This record is being compiled through the pages of the ARBITRATION JOURNAL, through supplements to the recently published "*Arbitration in Action*," through special surveys and studies such as that recently completed for the Association on "The Settlement of War Contracts" and by reports and summaries made public from time to time. One of the Association's publications—"Labor Arbitration in Wartime"—dealing with voluntary arbitration as a means of self-regulation, has resulted in four hundred requests a month, from management, labor and the

bar, for copies. . . . . Another publication widely distributed concerns "Wartime Labor Arbitration Clauses," in which is presented a series of seven arbitration clauses for inclusion in collective bargaining contracts.

Inter-American Business Relations. When war came to the Western Hemisphere, the Inter-American Commercial Arbitration Commission redoubled its efforts to take disputes out of old trade relations and keep them out of new ones. One of its early war activities was to strengthen the arbitration facilities in the Republics in which they did not meet wartime needs. The Secretary of the Commission has visited Mexico, Colombia, Peru, Ecuador and Cuba, where national committees have been strengthened, panels of arbitrators built up, programs for enacting the necessary arbitration laws planned and educational foundations laid for the more extensive use of arbitration. Similar programs are being mapped out for other republics.

Since the Inter-American Business Relations Committee was formed by the Commission in 1940, 166 matters involving differences or misunderstandings arising out of inter-American trade have been adjusted. These matters have been summarized in a report soon to be issued by the Commission. The parties to these differences have been residents of nineteen of the American Republics. . . . . In the adjustment of these matters, the Commission has had the cooperation of the Office of the Coordinator of Inter-American Affairs, the U. S. Department of Commerce, the Foreign Department of the Department of State and U. S. Consular officials in the various republics.

Extension of Arbitration to Canadian-American Trade. With the extension of the United States and Inter-American systems to Canadian-American trade, the entire Western Hemisphere is now blanketed by arbitration facilities that follow trade routes wherever they may lead. This latest extension was brought about through the collaboration of the Canadian Chamber of Commerce and the Association, and embraces machinery existing in the two countries. . . . . In October of this year there was completed a survey of Canadian arbitration machinery and the laws of the various provinces under which it operates, made possible by a grant from the Commission through the generosity of its Chairman, Mr. Thomas J. Watson, and carried on under the auspices of the Canadian Chamber by Mr. Brooke Claxton, K. C. and Member of Parliament. The survey provides a basis on which the expansion of the work of the new Commission can proceed.

MOTION PICTURE ARBITRATION TRIBUNALS

Report for First and Second Quarters of 1942

On February 1, 1942, the American Arbitration Association entered upon the administration of the Motion Picture Arbitration System for its second year and its first year of operation in wartime.

This report for the six months' period ending July 31, 1942, discloses a record of continued service to the motion picture industry, maintained despite the heavy demands for manpower which have resulted in the loss of many arbitrators called into Government or military service and has necessitated the frequent shifting or replacement of Tribunal Clerks for the same reason. It ends a period in which the industry has again registered approval of the administration of the thirty-one regional Tribunals by the Association and its confidence in the calibre and ability of the arbitrators serving on the Motion Picture Panel.*

In this period, 67 demands for arbitration were filed in the Motion Picture Arbitration Tribunals established under the Consent Decree, and 48 cases were pending at the beginning of the second year. Of these 115 cases, 64 were concluded during the first six months of the second year of operation: 50 by awards and 14 by settlement and withdrawal. Thirty-two of the awards rendered were in favor of the exhibitor and in 18 cases the exhibitors' claims were disallowed.

Demands for arbitration filed from the beginning of operation, February 1, 1941, to July 31, 1942, total 235.

184 of these cases have been disposed of, 128 by awards and 56 by settlement and withdrawal. 69 were in favor of the exhibitor and 59 in favor of the distributor.

The cases were distributed among thirty tribunals as follows:

Albany	6	Des Moines	3	New York	41
Atlanta	2	Detroit	9	Oklahoma City	4
Boston	12	Indianapolis	6	Omaha	1
Buffalo	15	Kansas City	5	Philadelphia	21
Charlotte	2	Los Angeles	9	Pittsburgh	3
Chicago	18	Memphis	3	Portland	2
Cincinnati	9	Milwaukee	3	St. Louis	11
Cleveland	4	Minneapolis	6	Salt Lake City	2
Dallas	6	New Haven	6	San Francisco	5
Denver	3	New Orleans	7	Washington, D. C.	11

(No cases were presented in Seattle)

* See Motion Picture Herald for August 15, 1942 (p. 13).

By classification the 235 cases filed were divided as follows:

Clearance (Section VIII)	171
Some Run (Section VI)	31
Designated Run (Section X)	12
Combination (two or more sections of the Decree)	21
	235

It is interesting to note that approximately 73 per cent of the cases filed have been under Section VIII of the Decree, the Clearance section.

For the six months ended July 31, 1942, 24 cases have been appealed, making a total of 46 cases appealed since February 1, 1942. 30 decisions have been rendered by the Appeal Board, of which 14 have modified the Award of the Arbitrator, 8 have reversed the Arbitrator's Award and 8 have affirmed the Arbitrator's findings. 15 decisions have been in favor of the distributor and 15 in favor of the exhibitor.

The arbitrators who served in the hearings held in the First and Second Quarters of the second year of operation of the Tribunals were:

Albany: Joseph Rosch, former Justice of Supreme Court, New York. *Boston:* Garret S. Hoag, attorney; Harry S. Tosdal, Professor of Marketing, Harvard University; Edward A. Counihan, Jr., attorney; Frederick W. Bliss, District Sales Manager, General Electric Company; George E. Gordon, attorney. *Buffalo:* Louis B. Dorr, attorney; Joseph M. Boehm, President, Fairhaven Village, Inc.; Nathan Rovner, attorney; William E. Barrett, attorney; George W. Wanamaker, attorney; Richard H. Templeton, attorney.

Chicago: Wilbur A. Giffen, attorney; Arthur J. Goldberg, attorney; Thomas C. McConnell, attorney; Hayes McKinney, attorney and past President of Chicago Bar Association. *Cincinnati:* Stanley Matthews, Judge of Court of Appeals of Appellate District of Ohio; J. Virgil Cory, attorney; Charles M. Buss, attorney and past President of Cleveland Bar Association; Leonard H. Davis, attorney and member Executive Committee, Cleveland Bar Association. *Dallas:* C. F. O'Donnell, former corporate Judge and past president Dallas Bar Association. *Detroit:* Joseph A. Vance, Jr., attorney; Jerome G. Thomas, Chairman, Department of Business Administration, Wayne University; Wilber M. Brucker, attorney and former Governor of Michigan.

Indianapolis: Albert Stump, attorney; Harold Bredell, attorney. *Kansas City:* Harry M. Shughart, attorney; Wendell H. Cloud, attorney. *Los Angeles:* James M. Ruse, former Treasurer of Union Oil Company of California; Eugene Breitenbach, attorney; Irvin Stalmaster, attorney. *Minneapolis:* Arnold A. Karlins, attorney; Oscar G. Haugland, attorney. *New Haven:* George P. Murdock, Professor of Anthropology, Yale

University; Leonard S. Horner, industrialist. *New Orleans:* Bert Flanders, attorney; Theodore W. Bethea, attorney; Phillip E. James, attorney.

New York: I. Edwin Goldwasser, Vice President, Commercial Factors Corporation; William H. Wadhams, Judge of Court of General Sessions; Robert R. Bruce, attorney; Arnold J. Brock, attorney; Samuel W. Tannenbaum, attorney; Morris B. Moskowitz, attorney; Vincent J. Malone, attorney; John K. Watson, attorney; Robert Abelow, attorney, presently with War Labor Board; Lionel S. Popkin, attorney; Roscoe S. Conkling, attorney; Julius Henry Cohen, General Counsel, New York State Chamber of Commerce; John T. McGovern, attorney; John C. Pemberton, attorney. *Oklahoma City:* Breck Moss, attorney and Chairman, State Election Board.

Philadelphia: A. E. Southgate, General Credit Manager of Philadelphia and Reading Coal and Iron Company; Robert J. Callaghan, Jr., attorney and Associated Editor of Philadelphia Bar Journal; W. A. Wiedersheim, attorney and member of Board of Governors, Philadelphia Bar Association; Rupert C. Schaeffer, attorney and Instructor of Business Law, Wharton School, University of Pennsylvania; Walter H. Robinson, attorney. *San Francisco:* Murray Draper, attorney and President of Jr. Chamber of Commerce. *Salt Lake City:* Robert L. Judd, attorney. *St. Louis:* Wilbur B. Jones attorney; Ethan A. H. Shepley, St. Louis, attorney; Thomas C. Hennings, St. Louis, former Judge of Circuit Court of St. Louis; Claude Pearcey, attorney and former Judge of Circuit Court of St. Louis. *Washington:* John E. Laskey, attorney and former U. S. Attorney for District of Columbia.

SUMMARY OF AWARDS

Boston. Paul A. Hunter and Ruth M. Hunter, Playhouse Theatre, Gorham, Maine, and Loew's Inc., 20th Century-Fox, Vitagraph, Paramount Film Distributing Corp., RKO (3-1F-42).

Intervenors: Maine Theatres Corporation, New England Theatres, Inc., Publix Netoco Theatres Corp.

The exhibitor claimed that he was subject to a thirty days' clearance after the Star Theatre in Westbrook and sixty days after the State and Strand Theatres in Portland. It was the complainant's contention that this clearance was unreasonable and requested that the former be reduced to two weeks and the latter to one day. The Arbitrator in his Award found that the clearance of thirty days now in force between the first run Portland Theatres and the Star Theatre was unreasonable. He fixed maximum clearance between the State, Strand, and Empire Theatres in Portland and the Star Theatre in Westbrook on the one hand, and the Playhouse Theatre in Gorham on the other, at forty-five days in favor of the Strand, Empire, and State Theatres over the Playhouse Theatre, or seven days in favor of the Star Theatre over the Playhouse Theatre, whichever is earlier. The clearance in each instance is to be computed from the end of the run including first run.

Boston. E. M. Loew's, Inc., Strand Theatre, New Bedford, Mass., and Paramount Film Distributing Corporation, 20th Century-Fox, Vitagraph, RKO (3-7F-41).

The exhibitor complained that he was subject to seven days' clearance after the Rialto Theatre which he claimed was unreasonable. He requested that the Arbitrator direct the distributors involved to license their features to the complainant's theatre with the same clearance as to the Rialto Theatre. The Arbitrator in his Opinion and Award stated that in the absence of proof by the complainant that the clearance now in force between complainant's theatre, the Rialto Theatre, the Baylies Square Theatre, and the Casino Theatre, was unreasonable, he had no alternative but to dismiss the case.

Boston. Frank M. Deane Colonial Theatre, Manchester Depot, Vermont, and Loew's, RKO (3-4F-42).

Intervenors: General Stark Theatre, Rutland Enterprises, Inc.

The exhibitor stated that he was subject to the following clearances: Immediately after first run Paramount Theatre or Grand Theatre, Rutland, Vermont, which is thirty-two miles from complainant's theatre; also, immediately after the General Stark Theatre, a first run house in Bennington, Vermont, which is twenty-six miles from Manchester Depot. He requested that clearance be eliminated entirely. The Arbitrator dismissed the complaint against RKO Radio Pictures and in his Award directed that Loew's, Inc., license its features for exhibition in complainant's theatre immediately after first run Rutland or first run Bennington, whichever plays last, as presently provided, but with the modification that the maximum waiting period shall be fourteen days after availability to first run theatres in Rutland.

On appeal: Decision pending.

Buffalo. Irving Cohen, Allendale Theatre, Buffalo, New York, and Loew's, Vitagraph, Paramount, 20th Century-Fox (16-6F-41).

The exhibitor complained that the present availability of features for exhibition in his theatre was unjust and unfair because of reduced admissions charged at the Marlowe Theatre and because of unfair practices at that theatre. He requested that availability of product to his theatre be changed to read "ahead of Marlowe Theatre." The Arbitrator, pursuant to a General Stipulation made between and signed by all the parties to this proceeding, entered an Award fixing the maximum clearance between the Marlowe Theatre and the complainant's theatre, in licenses hereafter entered into, at seven days.

Buffalo. James A. Ryan, John F. Ryan and William P. Ryan, co-partners, doing business as Ryan's Ithaca Theatre, Ithaca, New York, and Paramount, Loew's, Vitagraph, RKO, 20 Century-Fox (16-7DF-41).

Intervenor: Cornell Theatres, Inc.

The exhibitor stated that distributor defendants had refused to license their features for exhibition in complainant's theatre on some run. In addi-

tion, they complained that the clearance applicable to their theatre was unreasonable. The Arbitrator, pursuant to a Stipulation entered into between the parties, awarded as follows: The Demand for Arbitration is withdrawn without prejudice insofar as the same asks for relief under and in accordance with Section VI of the Consent Decree. With reference to Section VIII he fixed the maximum clearance between complainant's theatre and the theatres operated by the intervenor which may be granted in licenses hereafter entered into at thirty days.

Buffalo. Vincent Martina, Astor Theatre, Attica, New York, and Loew's, Paramount, RKO, Vitagraph (16-2F-42).

Intervenor: Warner Bros. Circuit Management Corp.

The exhibitor alleged that the thirty days' clearance granted the New Family Theatre was unreasonable and requested that it be reduced to immediately after Batavia. The Arbitrator in his Award found that the present clearance was unreasonable and fixed the maximum clearance between the New Family Theatre in Batavia on the one hand and the Astor Theatre, Attica, on the other, at fourteen days.

Buffalo. Caroline Perriello, Clyde Playhouse, Clyde, New York, and 20th Century-Fox, Loew's, Paramount, RKO, Vitagraph (16-3F-42).

Intervenors: Ohmann Bros., Rochester-Liberty Corporation.

The exhibitor was subject to a fourteen-day clearance in favor of the Capitol Theatre, Newark, New York, operated by the Schine Circuit. He requested that this clearance be reduced to immediately after exhibition at the Capitol Theatre. The Arbitrator in his Award found that the existing clearance was reasonable and accordingly dismissed the complaint.

On appeal: Decision pending.

Buffalo. M. M. Konczakowski, Regent Theatre, Buffalo, New York, and Loew's, 20th Century-Fox, RKO (16-5F-42).

Intervenors: Basil Bros. Theatres, New Ariel Theatre.

The exhibitor alleged that the clearance of seven days now in force in favor of the Apollo Theatre, Buffalo, was unreasonable. The Arbitrator in his Award found that the existing clearance was not justified historically or otherwise and was unreasonable. He fixed the maximum clearance which may be granted in licenses hereafter entered into at three days but only for so long as, and provided that, the admission price differential between the Apollo and Regent theatres, respectively, shall not be increased beyond the present price differential of two cents. During the hearing all parties entered into the following stipulation: That if the Arbitrator made an Award fixing a maximum clearance in favor of the Apollo Theatre over the Regent Theatre he should also make an Award fixing the same maximum clearance in favor of the Apollo Theatre over the New Ariel Theatre. Pursuant to this Stipulation the Arbitrator entered as part 2 of his Award that the maximum

clearance which may be granted to the Apollo Theatre over the New Ariel Theatre in licenses hereafter entered into shall be three days but only for so long as, and provided that, the admission price differential between the said Apollo and the New Ariel theatres, respectively, shall not be increased beyond the present price differential between them. Within twenty days after the Award was filed the Arbitrator reopened the proceeding for the purpose of correcting an inadvertent error in the Award. In his Corrected Award the Arbitrator stated that the intent and meaning of the Stipulation was to preserve the existing status between the Regent and New Ariel theatres and to maintain the established and existing parity of clearance between them in favor of the Apollo. He therefore corrected part 2 of his Award to read as follows: That on stipulation of all the parties the maximum clearance as contingently limited or restricted in favor of the Apollo Theatre over the Regent Theatre in licenses hereafter entered into by the distributor defendants shall be the maximum clearance in favor of the Apollo over the New Ariel Theatre.

On appeal: Decision pending.

Buffalo. Waterloo State, Inc., State Theatre, Waterloo, New York, and Paramount, Loew's, RKO, Warner Bros., 20th Century-Fox (16-6F-42).

Intervenor: Schine Enterprises Corp.

The exhibitor complained that he was subject to a clearance of thirty days after Strand Theatre in Seneca Falls, New York, which in turn had a fourteen days' clearance over the Geneva and Regent Theatres of Geneva, New York. By reason of this clearance the complainant's theatre had to wait a minimum of forty-four days for clearance of product over Geneva, New York. It was complainant's contention that this clearance period was unfair and unreasonable and requested either elimination or equitable reduction thereof. The Arbitrator, pursuant to a Stipulation of the parties, awarded as follows: that the maximum clearance which may be granted in licenses hereafter entered into in favor of Geneva and Seneca Falls over the complainant's theatre in respect of first run exhibition at the Geneva and Regent theatres and the Strand Theatre shall be Geneva thirty days ahead of Waterloo, Seneca Falls ten days ahead of Waterloo, but in no event, however, shall Waterloo's availability be earlier or later than thirty days after first run Geneva.

Buffalo. Town Hall Homer Theatre Corp., Capital Theatre, Homer, New York, and Paramount, Loew's, RKO, Warner Bros., 20th Century-Fox (16-7F-42).

Intervenor: Schine Enterprises Corp.

The exhibitor stated that he was compelled to wait thirty days after the exhibition of motion pictures at both the State and Temple theatres of Cortland, New York. He contended this was unreasonable and requested the Arbitrator to eliminate completely the clearance or reduce it equably. The Arbitrator, pursuant to a Stipulation of the parties, made the following

Award: that with respect to complainant's theatre the existing clearance of thirty days granted to the State and Temple theatres, Cortland, New York, in respect of first run exhibition over the Capital Theatre was not unreasonable and that the maximum clearance which may be granted in licenses hereafter entered into by the distributor defendants in favor of Cortland, New York, in respect of first run exhibition over the Capital, shall be thirty days.

Buffalo. The Corona Groton Theatre Co., Inc., Corona Theatre, Groton, New York, and Paramount, Loew's, RKO, Warner Bros., 20th Century-Fox (16-8F-42).

Intervenor: Schine Enterprises Corp.

The exhibitor stated that he was compelled to wait thirty days after exhibition of photoplays at the State and Temple Theatres of Cortland, New York. Both these houses are operated by the Schine Circuit, Inc. Complainant considered the present clearance unwarranted and requested that it be eliminated or reduced equably. The Arbitrator, pursuant to a Stipulation of all the parties, awarded as follows: that the maximum clearance which may be granted to the State and Temple theatres in Cortland, New York, over complainant's theatre in licenses hereafter entered into by the distributor defendants shall be twenty-one days.

Chicago. Sun Theatre Corporation, Wheaton Theatre, Wheaton, Illinois, and Loew's, Paramount, RKO, 20th Century-Fox, Vitagraph (5-1F-42).

Intervenors: Balaban and Katz, Lombard Theatre Corp.

The exhibitor stated his theatre played in "C" week of the Chicago general release and was subject to a six weeks' clearance after the Arcade Theatre located in St. Charles, Illinois, and that this was unreasonable. He requested that the Arbitrator fix a maximum reasonable clearance between the two theatres. The Arbitrator in his Award fixed the maximum clearance applicable to the Arcade Theatre over the Wheaton Theatre at not to exceed twenty-four hours so that the latter theatre would have the privilege of exhibiting motion pictures twenty-four hours after the conclusion of the exhibition of such pictures at the Arcade Theatre.

On appeal: Decision pending.

Cincinnati. Alpine Belle Theatre Company, Inc., Alpine Theatre, Belle, West Virginia, and Vitagraph, Paramount, RKO, 20th Century-Fox (4-3H-42).

Intervenors: Black Diamond Theatres, Inc.

The exhibitor stated that he had enjoyed the sole run in the city for a period of ten years. In December, 1941, however, ground was broken for the construction of a theatre to be operated by the Black Diamond Theatre Company. The distributor defendants involved refused to continue to license their features for first run exhibition at complainant's theatre on the ground

that such features were to be licensed to the Belle Theatre when, as and if such theatre commenced operation. At the hearing counsel for the complainant made a statement of what he expected to prove in support of his complainant and the distributors and intervenor moved for a dismissal asserting that the complainant's admissions disclosed that he was entitled to no relief under Section X of the Consent Decree. The Arbitrator granted this motion and dismissed the complaint for lack of jurisdiction.

Cleveland. Park Theatre Co., Dueber Theatre, Canton, Ohio, and 20th Century-Fox, Paramount, Vitagraph, Loew's, RKO (6-1D-42).

Intervenors: Reinhart Amusement Company, Lyceum Theatre Company, Mozart Company, Valentine-Strand Company.

The exhibitor claimed that the distributor defendants had refused to license pictures for exhibition on any run upon terms and conditions not calculated to defeat the purpose of Section VI. The Arbitrator in his Award found that the distributor defendants involved had not refused to license pictures to the complainant for exhibition on some run upon terms and conditions not calculated to defeat the purpose of the Section and therefore dismissed the complaint.

Cleveland. Tuscarawas Amusement Company, operating State and Ohio Theatres in Uhrichsville, Ohio, and the Lincoln Theatre in Dennison, Ohio, and Paramount, RKO, 20th Century-Fox, Vitagraph, Loew's (6-2F-42).

Intervenor: Shea Chain, Inc.

The exhibitor alleged that the clearance of fourteen days granted to the theatres of the Shea Chain, Inc., was arbitrary and unreasonable and requested that the existing fourteen days' clearance be reduced to a reasonable number of days. During the hearing the intervening party and the distributor defendants moved for dismissal of the proceeding on the ground that the complainant had not met the burden of proof required of it on the question of the unreasonableness of the clearance granted against it. The Arbitrator sustained the motion and dismissed the complaint.

Cleveland. Liberty Operating Company, Liberty Theatre, Akron, Ohio, and Vitagraph, Paramount, Loew's, 20th Century-Fox (6-3H-42).

Intervenor: Monogram Realty Corp.

The exhibitor stated that prior to 1938 his theatre was offered all product for first run on West Hill in Akron, Ohio, but that since the building and completion of the Highland Theatre he had been unable to secure first run by reason of the fact that such run was now being sold to the Highland Theatre by reason of the fact that such theatre was operated by and part of a buying combine or a circuit of more than fifteen theatres. Pursuant to a General Stipulation entered into between the parties the Arbitrator dismissed the complaint with prejudice.

Dallas. Eddie Joseph, Texas Theatre, Bastrop, Texas, and Warner Bros. and Vitagraph, Paramount Film Distributing Corp., 20th Century-Fox (7-1DF-42).

The exhibitor complained that defendants had refused to license their features for exhibition in his Texas Theatre on a run which was not calculated to defeat the purpose of Section VI of the Decree. He also requested that reasonable clearance be established. The Arbitrator awarded as follows: "(1) The clearance periods in Bastrop, Texas, for first runs over second runs is fixed at a maximum of fifteen days, and for first runs over third runs at a maximum of thirty days; (2) the maximum time within which defendants may withhold pictures from licensing for subsequent runs, after they are first exhibited in Bastrop, is fixed at fifteen days; (3) the defendants are required to observe the provision of their contracts with respect to datings; (4) the time within which the owners of the Strand and Tower theatres shall exercise their options for second runs on any picture licensed to them for first runs is fixed at fifteen days from the date of the exhibition of the picture under first run privileges; (5) all pictures with respect to which no other theatre in Bastrop has a prior or superior contractual right shall be made available to complainant for license on some run within a reasonable time; (6) the request of the complainant that he be entitled to features on runs and terms similar to runs and terms enjoyed by the Strand Theatre is denied, and the request of complainant for clearances over the Tower and Rio Theatres is denied." Within twenty days after the award was filed the Arbitrator reopened the proceeding upon motion of the complainant for the purpose of correcting inadvertent errors in the award. In the reopened proceeding the Arbitrator stated that after giving full consideration and weight to the arguments on behalf of all parties, he found that an error was made under Subdivision 1 of his original award and entered a corrected award with respect to that subdivision as follows: "(1) The clearance periods in Bastrop, Texas, for first runs over second runs is fixed at a maximum of fifteen days and for second runs over third runs at a maximum of fifteen days." In all other respects the original award remains in full force and effect.

Detroit. Julius D. London, Booth Theatre, Detroit, Michigan, and Vitagraph, Paramount (8-1F-41).

Intervenors: East End, Plaza, Del The, Maxine, Whittier, and DeLuxe Theatres.

The exhibitor complained (1) that the above-named defendants refused reasonable clearance to the Booth Theatre over the Whittier and East End theatres; (2) that the above-named companies granted unreasonable clearance to the Del The Theatre over the Booth Theatre; (3) that Vitagraph, Inc., was not granting the Booth Theatre reasonable clearance on first national products over the Deluxe Theatre; (4) that the above distributors charged the Booth Theatre arbitrary film rentals which were unreasonable and thereby in effect refusing them a run; (5) complainant asked that the Arbitrator direct the respondent distributors to serve their products to the

Booth Theatre on the following basis: Immediately after Del The Theatre gets through playing and seven days' clearance over Deluxe, Whittier, East End, and Plaza Theatres, and, further, that all film rentals shall be reasonable and not calculated to defeat Section VI in regard to refusing a run or not calculated to defeat an Award. An amended demand for arbitration was filed adding the following complaint to be known as part (6) of the original demand: that the above-named defendants had arbitrarily refused to license their features for exhibition on the run requested by the complainant as provided in Section X of the Consent Decree and asked for appropriate relief in the premises under said Section. During the hearing parts (2), (3), (4), and (5) of the original demand for arbitration were withdrawn. Inasmuch as complainant's counsel admitted that no relief was sought under Section VIII of the Decree, but only under Section X, the Arbitrator, taking all things into consideration, dismissed the case.

Detroit. Erving A. Moss, Parkside Theatre, Detroit, Michigan, and Loew's, Paramount, Vitagraph, 20th Century-Fox, RKO (8-6H-41).

Intervenors: Aloma Theatre, Inc., Wm. A. London, d. b. a. Admiral Theatre, Rivola Theatre Company, Inc., United Detroit Theatres Corp.

The exhibitor alleged that the distributor defendants had arbitrarily refused to license their features on the run requested due to the fact that such a run was being licensed to theatres of a large buying combine known as the Cooperative Theatres of Michigan, and also to the Alger Theatre, a part of the United Detroit Theatres, a circuit of not less than fifteen theatres. The Arbitrator in his Award found that the respondent distributors should be prohibited from hereafter licensing their features for exhibition either in Aloma, Harmony, Rivola, or Alger theatres on the run requested by the Parkside Theatre, or in Parkside Theatre, on such run, otherwise than by separate contract or agreement which shall not be a part of any contract or agreement for the licensing of features for exhibition in any other theatre or conditioned upon the licensing of features for exhibition in any other theatre.

On appeal: Decision pending.

Detroit. Dan Gregory, Crystal Theatre, Beulah, Michigan, and Loew's, Paramount, RKO, 20th Century-Fox, Vitagraph (8-1F-42).

Intervenor: Ashmun Bros.

The exhibitor operates the Crystal Theatre in Beulah, Michigan, which theatre was opened in July, 1941. At that time the respondent distributors sold their product to complainant seven days after Garden Theatre, Frankfort, Michigan. In November, 1941, this clearance was raised to twenty-one days. Complainant alleged that this was unreasonable and requested the Arbitrator to restore the original clearance. The Arbitrator in his Award found that the twenty-one days' clearance allowed the Garden Theatre over the Crystal Theatre was unreasonable and fixed the maximum clearance

between the theatres at seven days provided seven days shall be allowed only when both theatres charged the same admission to adults and shall be increased to ten days when the Crystal Theatre plays at an adult price of five cents lower and to fourteen days when its adult admission is ten cents lower than that of the Garden Theatre.

Indianapolis. William Rosenthal, Irving Theatre, Indianapolis, Indiana, and Loew's (24-1F-42).

Intervenors: Eten Theatre Corp., Marlene Theatre Corp.

The exhibitor claimed that the distributors involved had refused and continued to refuse to give him forty-second day run pictures upon a basis that was fair and reasonable for exhibition at his theatre. The Arbitrator in his Award stated that based upon the evidence submitted there was no arbitrable issue tendered and therefore dismissed the complaint.

Indianapolis. S. S. Stephens, Regal Theatre, Indianapolis, Indiana, and 20th Century-Fox, Loew's, Vitagraph, Paramount, RKO (24-2F-42).

Intervenors: American Theatre Corp., Lockfield Amusement Co., Inc., Park Theatre Corp.

The exhibitor alleged that the respondent distributors licensed their pictures for exhibition at the Walker, Park, and Lido theatres, all owned and operated by the Walker Theatre Co., and in addition granted clearance and runs over the Regal Theatre of thirty days after the Walker and fourteen days after the Park, which was unreasonable and unfair. He requested that the clearance for the Regal Theatre be set at seven days after Walker's first run, one day after Park, and thirty days ahead of Lido. The Arbitrator in his Award found that the existing clearance of thirty days in favor of the Walker Theatre over the Regal Theatre was reasonable, and that the present clearance of fourteen days in favor of the Park Theatre over complainant's theatre was reasonable, and therefore dismissed the complaint. He also dismissed the action insofar as it sought clearance in favor of the complainant's theatre over the Lido Theatre.

Kansas City. Dickinson, Inc., Dickinson Theatre, Mission, Kansas, and 20th Century-Fox, Paramount Film Distributing Corp., RKO, Vitagraph, Loew's (18-2F-42).

Intervenors: Kansas City Operating Corp., Fox Kansas City Corp., Missouri Orpheum Corp., A. Orear (Aztec Theatre).

The exhibitor alleged that, contrary to Section VIII of the Decree, the respondent distributors had held his theatre to fifty-six days' clearance after first run Kansas City, although other theatres situated outside the city limits were not held this far back. He requested a maximum clearance not exceeding fourteen days after first run Kansas City. During the hearing motions were made by the defendants to dismiss the action based on the provisions of Section XVII of the Consent Decree. These motions were denied

by the Arbitrator with the statement that Section XVII must be read in connection with every other section of the Decree which affords any relief by way of arbitration. He realized, however, that Section XVII definitely imposed a limitation upon the powers of the Arbitrator, but he was of the opinion that the language of Section VIII authorized the Arbitrator to determine whether clearance was reasonable or unreasonable regardless of the fact that a theatre involved was affiliated with a distributor. The Arbitrator awarded that the clearance applicable to the complainant's theatre may not be greater than twenty-eight days following the close of the exhibition in first run theatres in Kansas City and that the maximum clearance between the Aztec Theatre at Shawnee, Kansas, and complainant's theatre may not be greater than one day following the close of exhibition in the Aztec Theatre.

Appeal: The Appeal Board in its decision modified the Arbitrator's award as follows: The maximum clearance which may be granted, in licenses hereafter entered into by 20th Century-Fox, Paramount Film Distributing Corp., Loew's, RKO and Vitagraph, to the Aztec over the Dickinson shall be one day after last play date at the Aztec, otherwise the complaint against 20th Century-Fox is dismissed. The maximum clearance which may be granted, in licenses hereafter entered into by Paramount Film Distributing Corp., Loew's, RKO and Vitagraph, to the Plaza over the Dickinson shall be fourteen days after last play date at the Plaza. No specific clearances shall be granted by said four defendants to the Isis, Warwick, Brookside or Waldo theatres over the Dickinson, but this provision shall not restrict the right of said four defendants to grant these four theatres such availabilities after the first run downtown theatres, or such runs in their respective competitive zones, as they may desire.

Kansas City. D. R. Gifford, Louis Theatre, St. Joseph, Missouri, and 20th Century-Fox, Paramount Film Distributing Corp., Loew's, Vitagraph (18-3F-41).

Intervenors: Durwood-Dubinsky Bros. Theatres.

The exhibitor operates a colored theatre and in his demand for arbitration stated that he is held to the same clearances as white theatres operating on third run. This clearance varied from one hundred and nineteen to one hundred and forty-three days after first run. It was requested that the maximum clearance be fixed at not more than thirty days after first run. The Arbitrator in his Award fixed the maximum clearance at one hundred and thirty-three days after last play date at Missouri and Orpheum theatres.

Los Angeles. George Bromley and Alex Mounce, doing business as Campus Theatre, Los Angeles, California, and Paramount, Loew's, RKO, Vitagraph, 20th Century-Fox (9-1F-41).

Intervenors: R. D. Whitson; C. W. Blake; and Edward D. Patterson.

The exhibitor asserted that the distributors involved had given the Sunset, Clinton, and Hunley's theatres an unreasonable clearance over their Campus Theatre. This clearance, it was alleged, prevented the complainant from

charging more than fifteen cents admissions although their theatre was not competitive with the other theatres because of natural barriers between them. It was requested that a fair clearance be fixed which would permit them to charge twenty cents for admission. A hearing date was set and despite due notice thereof sent to and received by the complainant he failed to appear either in person or by counsel. The Arbitrator at the hearing dismissed the proceeding upon motions made by two of the parties involved.

Los Angeles. California Drive-In Theatres, Inc., Burbank, California, and Loew's, Paramount, Vitagraph, RKO (9-2F-42).

Intervenors: Loma Theatre Company, Minor Estate (Major and Magnolia Theatres), Gateway Theatre Company.

The exhibitor stated that the distributor defendants had licensed their pictures to the Major, Magnolia and Loma theatres, charging twenty-eight cents admission price on the basis of sixty-three days' clearance over complainant's San Val Theatre charging an admission price of thirty cents. It was requested that the maximum clearance be fixed at not more than seven days in licenses hereafter entered into. The Arbitrator in his Award fixed the maximum clearance which may be granted to the Major, Magnolia, and Loma theatres over complainant's theatre at twenty-eight days with the provision that the clearance is based on admission prices obtaining on March 5, 1942.

On appeal: Decision pending.

Los Angeles. Sidney Pink and Joseph Moritz, Century Theatre, Los Angeles, California, and Paramount, 20th Century-Fox, Loew's, Vitagraph, RKO (9-3F-42).

Intervenors: Southside Theatres, Inc., Far West Theatre Corp., Vinnicof Theatres Circuit.

The exhibitor stated (1) that he was subject to thirty-five days' clearance in favor of first run Los Angeles theatres, which was unreasonable; (2) that the seven-day clearance of the Manchester Theatre over complainant's theatre was unreasonable. He requested that first run Los Angeles houses be given no more than twenty-one days and that the clearance between his theatre and the Manchester theatre be eliminated. The Arbitrator found that the clearance was not unreasonable and therefore dismissed the complaint.

On appeal: Decision pending.

Minneapolis. White Bear Theatre Corporation, White Bear Theatre, White Bear Lake, Minnesota, and Loew's, RKO, Vitagraph, 20th Century-Fox (10-1DF-41).

Intervenor: State Theatre Corporation.

The exhibitor alleged that the distributor defendants refused to license pictures to them on any run. They further alleged that a reasonable clear-

ance between their theatre and the State Theatre is necessary to make any run worth while and requested that such clearance be fixed. The Arbitrator dismissed the complaint as to defendants Loew's, Inc., RKO Radio Pictures, and Vitagraph, Inc. He directed that 20th Century-Fox offer for exhibition in complainant's theatre a run of pictures, the terms and conditions of which were not calculated to defeat the purpose of Section VI of the Consent Decree.

Minneapolis. Duluth Theatre Corp., Lyceum Theatre, Duluth, Minnesota, and Paramount Pictures, Inc. (*10-4D-41*).

The exhibitor alleged that Paramount Pictures, Inc., had refused to license its pictures on some run to complainant's Lyceum Theatre. During the hearing counsel for the complainant moved for a dismissal and the Arbitrator granted the motion.

New Haven. Joseph L. Shulman, Plaza Theatre, Windsor, Connecticut, and Paramount, Loew's, RKO, 20th Century-Fox, Vitagraph (*26-5F-41*).

Intervenor: Lampert Theatre of Windsor, Inc.

The exhibitor complained of the twenty-eight to thirty days' clearance granted to the Windsor Theatre. In his original demand for arbitration he requested that this clearance be completely eliminated, but at the first hearing the demand was amended to ask for a reduction of clearance to not more than twenty-four hours. In addition, an attempt was made to include a claim under Section X of the Decree, but the Arbitrator denied this application and in his Award found that the existing clearance of twenty-eight to thirty days was reasonable and, therefore, dismissed the complaint.

New Haven. Grand Theatre Corporation, New Haven, Connecticut, and Loew's, RKO, Vitagraph, 20th Century-Fox (*26-6FG-41*).

Intervenor: Harry L. Lavietes, operating Pequot Theatre.

The exhibitor claimed that he had been discriminated against in connection with clearances; that clearances agreed upon had been revoked and the terms thereof violated; and that prints had been arbitrarily withheld from him although available. He requested that a clearance of not more than seven days after the Pequot Theatre be established and that prints be made available to him. The Arbitrator in his Award (1) dismissed the complaint against RKO and 20th Century-Fox; (2) found that the fourteen-day clearance now in force between the Grand Theatre and the Pequot Theatre was reasonable; (3) the maximum clearance between Grand Theatre and the Dreamland Theatre shall be reduced to seven days; (4) that clearances between the Grand Theatre and Dreamland Theatre under (2) and (3) shall in no event be delayed beyond the period of forty-nine days after the date of first availability to the Pequot and the Dreamland Theatres.

New Orleans. W. A. Fonseca & Sons, Ashton Theatre, New Orleans, Louisiana, and MGM, Paramount Film Distributing Corp., RKO, 20th Century-Fox, Vitagraph (27-4FH-41).

Intervenor: United Theatres, Inc.

The exhibitor complained of the sixty days' clearance granted to the Poplar Theatre operated by United Theatres, Inc. Because of the difference between them it was contended that the two theatres should never have been considered in the same zone and that the only reason the Poplar was granted sixty days' clearance was that it formed a part of a circuit with tremendous buying power which could demand any clearance it desired over the independent theatres in the city. It was requested that the Arbitrator determine (1) what constitutes a zone; (2) that the Ashton Theatre be located in a separate zone from the Poplar and all other suburban theatres, with no clearance granted to any of them over it; and (3) that the Ashton Theatre be granted a run immediately following the clearance period granted the first run downtown or Canal Street theatres. The Arbitrator found that the existing clearance of sixty days in favor of the Poplar Theatre was unreasonable and fixed the maximum clearance in favor of the Poplar over the Ashton at ten days.

Appeal: The Appeal Board in its decision affirmed the Arbitrator's award and in addition stated that while the Arbitrator did not have the power to grant the relief requested, in Paragraph 3 of the original complaint, the Ashton Theatre was certainly entitled, in addition to the reduction in clearance, to reasonable protection from booking delays. The Appeal Board augmented the Arbitrator's award as follows: The maximum clearance which may be granted to the Poplar Theatre over the Ashton Theatre in licenses hereafter entered into by the distributor defendants shall be ten days, not later than seventy-five days after first run Canal Street downtown theatres.

New Orleans. Lakeview Theatres, Inc., New Orleans, Louisiana, and Paramount Film Distributing Corp., RKO, Vitagraph (27-1D-42).

The exhibitor alleged that the distributors involved refused to sell to the complainant a suburban first run after Canal Street and downtown first run. It was the claimant's contention that his theatre was entitled to this run in preference to any other theatre in the immediate vicinity or within a radius of not less than fifteen blocks because (1) it was the first theatre built and operated in that zone, (2) it made the first request for pictures in that vicinity, (3) its construction, design, appointments and operating policy were equal to or better than any suburban theatre in New Orleans or elsewhere, and (4) it was willing to pay a reasonable price. The Arbitrator in his award dismissed the action against Paramount Film Distributing Corp., but ordered RKO and Vitagraph to offer their product for license in complainant's theatre upon terms and conditions which were not calculated to defeat the purpose of Section VI of the Consent Decree.

On appeal: Decision pending.

New York. Liberty-Freehold Theatre Corporation, Liberty Theatre, Freehold, New Jersey, and Loew's, Paramount, 20th Century-Fox, RKO, Vitagraph (1-16DF-41).

Intervenors: Riverside Operating Company, Inc., Publix Asbury Corp., Mattison Avenue Theatre Corp., St. James Operating Co., Inc., Freehold Theatre Co.

The exhibitor filed this proceeding under Section VI, *Some Run*, as to 20th Century-Fox, Loew's, and Paramount and under Section VIII, *Clearance*, as to RKO and Vitagraph. Under Section VI the exhibitor complained that the distributors named had refused to license their product to it. Under Section VIII it complained that fourteen days' clearance granted first run Asbury Park was unreasonable and requested that it be eliminated. The complaint was withdrawn as to 20th Century-Fox, Loew's and Paramount without prejudice. During the hearing the Demand was amended to ask if competition be found that the clearance be reduced to one day "in no event to exceed twenty-one days after first run Asbury Park's availability." The Arbitrator said that this relief was outside his jurisdiction under Section VIII, because it would restrict the distributors' and exhibitors' rights to sell and license a first run. In any event he held that the Asbury Park theatres had not delayed complainant's exhibition by unreasonable failure to play promptly after availability, and therefore this portion of the Demand was denied on the merits. He fixed the maximum clearance against complainant's theatre in favor of the intervenor's Savoy Theatre at one day, and in favor of intervenor's Lyric Theatre at three days.

Appeal: The Appeal Board modified the Arbitrator's award as follows: No clearance exists between the Savoy and Liberty Theatres and no maximum clearance as between them is fixed; the maximum clearances which may be granted in licenses hereafter entered into by RKO and Vitagraph to the Lyric over the Liberty shall be three days, and to the Mayfair, Paramount and St. James over the Liberty shall be seven days, not later than thirty days after the termination of first run at a first run theatre in New York City. With respect to pictures which are not so played first run in New York City such maximum clearance shall be not later than thirty days after national release date.

New York. Keyport Theatre Company, Strand Theatre, Keyport, New Jersey, and Loew's Paramount, 20th Century-Fox, Vitagraph (1-17F-41).

Intervenors: Riverside Operating Company, Inc., St. James Operating Co., Inc., Publix Asbury Corp., Mattison Avenue Theatre Corp., Reade's Ocean Theatre Company, Broadway Operating Company, Perth Amboy Raritan Operating Company, Carlton Operating Company.

The exhibitor complained of the twelve days' clearance granted first run theatres in Asbury Park and asked that this clearance be eliminated. The Arbitrator in his award dismissed the complaint insofar as it sought elimination or reduction of clearance between complainant's theatre and the Mayfair, Paramount, and St. James Theatres. He further awarded that clear-

ance granted the Lyric Theatre over complainant's theatre shall not exceed three days and that the clearance granted the Savoy and Ocean theatres over complainant's theatre shall not exceed one day.

Appeal: The Appeal Board modified the Arbitrator's award as follows: As no clearance exists between the Savoy and Ocean Theatres and complainant's theatre, no maximum clearance between them in fixed; the maximum clearances on pictures played first run in Asbury Park which may be granted in licenses hereafter entered into by Loew's, Paramount Pictures, Inc., 20th Century-Fox and Vitagraph to the Lyric over complainant's theatre shall be three days, and to the Mayfair, Paramount and St. James over complainant's theatre shall be twelve days.

New York. Metropolitan Playhouses, Inc., Ogden Theatre, Bronx, New York, and Loew's, Paramount (1-21F-41).

Intervenor: J. J. Theatres, Inc.

The exhibitor alleged that the seven days' clearance granted by the distributor defendants to the Mt. Eden Theatre was unreasonable. He contended that the two theatres are not competitive and requested the Arbitrator to direct that his theatre play product clear of the Mt. Eden Theatre. The Arbitrator in his award found that the existing clearance was reasonable and therefore dismissed the complaint.

On appeal: Decision pending.

New York. Arden Enterprises, Inc., New York, N. Y., and Loew's, Paramount (1-22F-41).

Intervenors: Olthea, Inc., Sythca, Inc., Ardstodd, Inc.

The exhibitor claimed that at one time the Olympia, Stoddard, Riviera and 77th Street theatres exhibited features simultaneously and four days later they were exhibited in complainant's theatre and at the Carlton Theatre. At the present time the Olympia has clearance of forty-four days, the Stoddard thirty-four days, and the Carlton, which ran day and date with complainant's theatre, now has a clearance of five days over the Arden Theatre. The Arbitrator was requested to restore the original clearance and reestablish the run. In his Award the Arbitrator found that the clearance complained of was not unreasonable and therefore dismissed the complaint.

New York. Rosyl Amusement Company, Cameo Theatre, Jersey City, New Jersey, and Paramount, 20th Century-Fox, Loew's, RKO, Vitagraph (1-23FH-41).

Intervenors: Skouras Theatres Corporation, Rosewelt Realty Company.

The exhibitor filed under both Sections VIII and X of the Decree. With respect to Section VIII the complainant objected to the twenty-one days' clearance granted to the Fulton Theatre over its Cameo Theatre by Loew's, Inc., and asked that it be reduced to seven days. With respect to all other defendants, complainant objected to the clearance of seven days granted the Apollo, Orient and Fulton theatres. In its demand it alleged that the Fulton

Theatre was its principal, if not only, competitor. Complainant stated that Paramount Pictures, Inc., required Cameo to follow the Fulton, Rialto, Tivoli, Strand, Apollo and Orient theatres with seven days' clearance in favor of the Apollo and Orient, resulting in as much as fifty days wait after the Fulton. It asked that the clearance in favor of the Orient be eliminated and the maximum clearance be fixed at seven days after the Fulton or Apollo, whichever plays first. As to Section X it was alleged that all defendants had refused to grant the Cameo a second run following the Fulton and had granted second run to the Apollo, operated by Skouras. The Arbitrator was requested to enter an Award prohibiting the distributor defendants from licensing their pictures on that run other than by separate contracts not a part of or conditioned upon the licensing of pictures in any other theatre. In his Award the Arbitrator dismissed the complaint under Section X of the Decree as against all parties; also dismissed 20th Century-Fox under Section VIII. He awarded that maximum clearances which may be granted in licenses hereafter entered into by Paramount, RKO and Vitagraph shall be as follows: to Apollo Theatre, one day over Cameo Theatre, intervening clearances being such that the opportunity of Cameo to play within eleven days after Fulton is not restricted by reason thereof; to Orient Theatre, three days over Cameo Theatre, intervening clearances being such that the opportunity of Cameo to play within twenty-two days after Fulton is not restricted by reason thereof. To the extent that the existing twenty-one day availability arrangement between Loew's, Inc., and Cameo Theatre is construed by Loew's, Inc., so as to enforce clearance in favor of Fulton, Apollo, or Orient over Cameo in excess of those found in the Arbitrator's opinion or fixed in his Award as reasonable, Loew's, Inc., is required to adjust its licenses in conformance therewith.

New York. Luxor Bleecker Amusement Corp., Waverly Theatre, New York, N. Y., and RKO, Vitagraph, 20th Century-Fox (*1-24DFH-41*).

Intervenors: Grenart Operating Corporation, Brighton Theatre Corporation.

The exhibitor filed under Sections VI, VIII and X of the Decree. As to Section VI it was alleged that the complainant had enjoyed a run prior to the Art Theatre. The distributors involved refused to license ensuing year's products unless complainant would forego the run previously enjoyed and the exhibitor claimed that such refusal to negotiate and license pictures was calculated to defeat the purpose of Section VI. With respect to Section VIII it was alleged that for four years the Waverly was granted a run ahead of the Art with seven days' clearance over it, and at the present time the distributor defendants refused to grant that clearance. It requested that "the clearance attempted to be foisted on the Waverly" be found unreasonable and that the clearance be fixed on the same basis as previously enjoyed by the Waverly. As to Section X of the Decree, the complainant asked that the distributor defendants be prohibited "from licensing its features at the Art Theatre" and "compelling the distributors to permit the complainant the run it requested." The Arbitrator in his Award dismissed the action insofar as it related to Sections VI and VIII, and with reference to Sec-

tion X found in favor of the complainant. RKO, 20th Century-Fox, and Vitagraph were prohibited from hereafter licensing their features (except such as are at the date hereof under license for exhibition at the Art Theatre) for exhibition in the Art Theatre on a run ahead of that of the Waverly, or for exhibition in the Waverly on a run ahead of the Art, otherwise than by a separate contract or agreement which shall not be a part of any contract or agreement for the licensing of features for exhibition in any theatre or conditioned upon the licensing of features for exhibition in any other theatre.

On appeal: Decision pending.

New York. Drake Amusement Corporation, Central Theatre, Cedarhurst, L. I., and Loew's, Paramount, 20th Century-Fox, Vitagraph, RKO (*1-1FH-42*).

Intervenors: Center Theatres Corp., Skouras Corp., Frankstram Realties, Inc.

The exhibitor filed demand for arbitration under both Sections VIII and X. As to Section VIII, the complainant alleged that its theatre follows the RKO first run in Far Rockaway by seven days and also Skouras first run in Lynbrook by seven days. Its availability, however, was the same as that of Valley Stream, operated by Skouras. The Valley Stream was alleged to follow first run Rockville Centre, Hempstead, Freeport and Lynbrook. The complainant requested that all clearance be eliminated except that of Far Rockaway and that Far Rockaway's clearance be reduced to one day. In the alternative, complainant requested that if Lynbrook were found in competition with Cedarhurst the clearance be fixed at one day after first run Lynbrook, in no event later than three days after first run Far Rockaway. With reference to the second count, Section X, it was alleged that the Lynbrook Theatre was a circuit theatre and that the distributor defendants had refused complainant an earlier run or the same run as the Lynbrook because of the fact that the Lynbrook was a circuit theatre. The Arbitrator in his award stated that the second count dealing with the change of run was dismissed in the course of the hearings. He found that the existing clearance was reasonable and therefore dismissed the complaint.

New York. Majestic Theatre of Paterson, Paterson, New Jersey, and Paramount, Loew's, 20th Century-Fox, RKO, Vitagraph (*1-7F-42*).

Intervenor: Stateray, Inc.

The exhibitor complained of the seven days' clearance granted the State Theatre operated by the Brandt Circuit. He requested that this clearance be abolished and that complainant's theatre be permitted day and date with the State Theatre. At the commencement of the hearing each of the defendants involved moved to dismiss the complaint on the ground that it did not come within the purview of the Section VIII of the Consent Decree, in that no contracts existed between the complainant and the respective defendants for the purchasing or licensing of their pictures. The Arbitrator reserved decision on this motion but, in his award, stated that he had, under

Section VIII of the Decree, no jurisdiction to render an award, and therefore dismissed the action.

Oklahoma City. Gem Theatre Company, Tulsa, Oklahoma, and Vitagraph, Paramount Film Dist. Corp., RKO and 20th Century-Fox, M. G. M. Distributing Corp. (*28-1H-42*).

New Cozy Theatre Co., Tulsa, Oklahoma, and Vitagraph, Paramount Film Dist. Corp., M. G. M. Distributing Corp., RKO and 20th Century-Fox (*28-2H-42*).

The exhibitors claimed that the distributor defendants had arbitrarily refused to license their respective features on the fifth run requested by the complainants for exhibition in their theatres. They alleged that such refusal was based on the fact that the run requested was given to the Griffith Southwestern Theatres, Inc., a large circuit. The Arbitrator in his award upheld the contentions of the exhibitors and directed that the respondent distributors shall be prohibited from hereafter licensing their features for exhibition in either or any of the ten theatres in Tulsa operated by Griffith Southwestern Theatres, Inc., on the runs requested by complainants' theatres, otherwise than by separate contracts or agreements which shall not be a part of any contract or agreement for the licensing of features for exhibition in any other theatre or conditioned upon the licensing of features for exhibition in any other theatre.

Philadelphia. Parkside Theatre. A. M. Ellis, Martin B. Ellis, A. J. Rovner, Louis Rovner and Gertrude Handle trading as Liberty-Parkside Theatres Company, and Loew's, RKO, Paramount, Vitagraph (*11-11F-41*).

Intervenors: Warner Bros. Circuit Management Corp., Victoria Amusement Co.

The exhibitor alleged that he was held to a clearance of twenty-one days after first run Camden, N. J., and requested that this clearance be reduced to fourteen days. In his award the Arbitrator found that the twenty-one days' clearance in favor of the Savar, Stanley or Grand Theatres in Camden over complainant's theatre was reasonable. He further found that the twenty-one days' clearance of the Broadway Theatre, Tower, Lyric, Victoria and Rio Theatres over the Parkside was unreasonable and fixed the maximum clearance at fourteen days for all contracts hereafter entered by the distributor defendants.

On appeal: Decision pending.

Philadelphia. Lewen Pizor, Tioga Theatre, Philadelphia, Pennsylvania, and Paramount Film Dist. Corp. (*11-1F-42*).

Intervenors: Warner Bros. Circuit Management Corp., Great Northern Theatre Co., Inc.

The exhibitor claimed that Paramount Film Distributing Corp. permitted the Strand Theatre to play from thirty to sixty days ahead of the Tioga Theatre. He complained that this clearance was unreasonable and requested

that the arbitrator fix the maximum clearance between the Strand and Tioga theatres at not to exceed fourteen days. Prior to the hearing the Strand Theatre and the Great Northern Theatres, Inc., intervened, thereby becoming parties to the case. The Arbitrator in his opinion stated that the matter in controversy involved questions and problems other than simply a matter of clearance solely between the Strand and Tioga theatres. The rights of the Keystone Theatre and the Great Northern Theatre, intervenors, seemed to be involved. Accordingly, it was essential to explore the entire situation so as to ascertain in what way the four theatres involved might be affected. In his award the Arbitrator found that the Great Northern Theatre will not be required to play pictures of the distributor defendant later than eighteen days after the completion of the run of said pictures at the Strand Theatre; and that the Tioga Theatre will not be required to play pictures later than twenty-five days after the Strand Theatre, and further, that in the event the Strand Theatre does not play the pictures the availability to the Tioga Theatre of such pictures will not be later than twenty-five days after the date of availability to the Strand Theatre.

Appeal: The Appeal Board modified the Arbitrator's award as follows: The maximum clearance which may be granted in licenses hereafter entered into by Paramount Film Distributing Corporation to the Strand over the Tioga shall be twenty-one days. Clearances hereafter granted to the Strand over the Keystone, to the Keystone over the Great Northern, and to the Great Northern over the Tioga, shall be sufficiently short in point of time so that the right of the Tioga to exhibit pictures twenty-one days after the Strand shall not be restricted by the length of any such clearance.

Philadelphia. John and Grace Koczak, Earle Theatre, New Castle, Delaware, and Loew's (11-2DF-42).

After the decision of the Appeal Board in the first proceeding brought by these complainants under Section VI (Matter of Koczak, Decision No. 5, October 10, 1941), the distributor defendant sold the complainants' theatre a run twenty-one days after its Aldine Theatre at Wilmington. The present proceeding was instituted against Loew's, Inc., alleging that the run was calculated to defeat Section VI and that the clearance was unreasonable. It was requested that the Earle Theatre be granted a run ten days after Wilmington. The Arbitrator found that the run offered was not calculated to defeat the purpose of Section VI and accordingly dismissed the case.

Appeal: The Appeal Board concurred in the findings of the Arbitrator that the terms and conditions of the run offered to complainants' theatre were not calculated to defeat the purpose of Section VI. The Appeal Board affirmed the Arbitrator's award dismissing the complaint.

San Francisco. El Cerrito Theatre, Inc., Cerrito Theatre, San Francisco, California, and 20th Century-Fox, Loew's, Paramount (13-1F-42).

Intervenors: United West Coast Theatres Corp., Blumenfeld Theatres, Albany Theatre, Golden State Theatre & Realty Corp.

The exhibitor complained that the distributor defendants were granting unreasonable clearances to the Fox California and State Theatres over its

Cerrito Theatre and requested that reasonable maximum clearance be established. The Arbitrator stated that he felt the Cerrito Theatre was entitled to all the relief which could be granted under the Consent Decree and accordingly awarded as follows: (1) That the maximum clearance of State Theatre, Richmond, California, over Cerrito Theatre, El Cerrito, California, which may be granted under any existing license or franchise of, or in or under any license hereafter entered into by, defendants 20th Century-Fox, Loew's and Paramount or any of them, be and it is hereby fixed at one day, such period to be computed from date of opening at State Theatre; (2) That the maximum clearance between any first run theatre in Oakland, California, on the one hand, and, on the other hand, any of the following theatres; Albany Theatre, Albany, California, Oaks Theatre, Berkeley, California, and Rivoli Theatre, Berkeley, California, which may be granted under any existing franchise or license of, or in or under any license hereinafter entered into by, defendants 20th Century-Fox, Loew's and Paramount or any of them, be and it is hereby fixed at the period of time now fixed by availability dates specified in respective current agreements, less, however, the number of days by which 81 days exceeds the number of days from Oakland first run closing to such Cerrito availability date as may result from application of paragraph 1 of this award.

On appeal: Decision pending.

St. Louis. Olga Theatre Corp., Rialto Theatre, Hannibal, Missouri, and Vitagraph, 20th Century-Fox, Paramount Film Distributing Corp. (*20-1F-42*).

The exhibitor complained that the clearance applicable as between the Orpheum Theatre, Star Theatre and the Rialto Theatre was unreasonable. It was further alleged that no definite clearance existed between said theatres and that the defendants refused to establish a reasonable maximum clearance. The complainant requested that an award be entered fixing a reasonable maximum clearance and that said clearance be based on a definite release date. Pursuant to a General Stipulation entered into by the parties, the Arbitrator awarded as follows: that the clearance for features played third run in the Rialto Theatre shall be 185 days after the national release date of said features.

St. Louis. Louis M. Sosna, Sosna Theatre, Mexico, Mo., and Vitagraph, RKO, 20th Century-Fox, and Paramount Film Dist. Corp. (*20-2D-42*).

This is the third case filed by this exhibitor. The first proceeding was withdrawn, the second complaint was directed solely against Loew's, Inc., under Section VI, and the present proceeding, likewise, was brought under Section VI and directed against the above named defendants. In his Demand for Arbitration the complainant stated that the distributor defendants had refused to license their pictures for exhibition in his theatre upon suitable terms and conditions. The Arbitrator in his award found that the defendants RKO, 20th Century-Fox and Paramount Film Dist. Corp., had not refused to license their product for exhibition in complainant's theatre and, therefore, the action against these companies was dismissed. He found that the

defendant Vitagraph had refused to license its pictures and directed that company to offer the Sosna Theatre pictures on a run not calculated to defeat the purpose of Section VI of the Decree.

On appeal: Decision pending.

Washington. Bayne Roland Corp., Bayne Theatre, Virginia Beach, Va., and Vitagraph (14-10F-41).

Intervenors: Newport Theatre, Inc., W. W. V. Company, Inc.

The exhibitor claimed that Vitagraph, Inc., sold to his theatre first run in Virginia Beach but granted the Newport Theatre at Norfolk, Va., 21 days' clearance. This clearance was objected to as being unreasonable and complainant asked "relief from protection being granted the Newport Theatre." The arbitrator in his award found that the present clearance was unreasonable and fixed the maximum clearance between the parties involved at five days.

Appeal: The Appeal Board in its decision concluded that the clearance fixed by the Arbitrator should not be disturbed and in this respect affirmed the Arbitrator's award. The Board felt that the complainant should not be deprived of a safeguard against unreasonable booking delays and therefore augmented the Arbitrator's award as follows: The maximum clearance which may be granted to the Newport Theatre over the Bayne Theatre in licenses hereafter entered into by Vitagraph, Inc., shall be five days, not later than forty-five days after national release date.

APPEAL DECISIONS

In the six months covered by this report the Appeal Board made six decisions on awards that had been reported in the Fourth Quarterly Report. In order that the record may be complete, a summary of the Appeal Decisions in these cases appears below.

Buffalo. Decision No. 24—May 4, 1942 (16-5F-41).

Dipson Theatres, Inc., and Paramount, Loew's, Vitagraph, 20th Century-Fox, RKO.

The Appeal Board modified the Arbitrator's award as follows: "The maximum clearance which may be granted in licenses hereafter entered into by Vitagraph, Inc., RKO Radio Pictures, Inc., and Twentieth Century-Fox Film Corporation to the Kensington Theatre over the Bailey Theatre, where Kensington has the prior run, shall be one day, and to the Bailey Theatre over the Kensington Theatre, where Bailey has the prior run, shall also be one day; in each case not later than thirty-seven days after first run downtown. The dismissal of the complaint against Paramount Pictures, Inc., and Loew's Incorporated is affirmed."

On motion the Appeal Board was requested to reopen the proceeding for the purpose of striking out the words in the original Decision "in each case not later than thirty-seven days after first run downtown." All parties to

the proceeding filed additional briefs together with comprehensive schedules on the playing dates of the Kensington and availabilities of the Bailey for the purpose of furnishing the Board with accurate and complete data which it did not have in the original record. The Board corrected its award by the deletion of the words "in each case not later than thirty-seven days after first run downtown."

Chicago. Decision No. 26—June 4, 1942 (5-9F-41).

William Pearl, doing business as Alcyon Theatre, and 20th Century-Fox, RKO.

The Appeal Board affirmed the award of the Arbitrator and dismissed the appeal.

Dallas. Decision No. 18—February 17, 1942 (7-5F-41).

B. R. McLendon and 20th Century-Fox, RKO, Vitagraph.

The Appeal Board reversed the award of the Arbitrator and directed that the maximum clearance which may be granted to the Paramount and Strand theatres in Texarkana, Texas, over the State and Texan theatres in Atlanta, Texas, in licenses hereafter entered into by the distributor defendants shall be one day after first run in Texarkana.

San Francisco. Decision No. 21—April 9, 1942 (13-4F-41).

Piedmont Theatre, Inc., and Paramount, RKO, Loew's, 20th Century-Fox, Vitagraph.

The Appeal Board in its Decision stated that the record disclosed that the complainant played only a small proportion of pictures on its availability and delayed playing many pictures until weeks after they had become available. It was the Board's contention that it was hardly reasonable to expect a reduction of clearance when full advantage of existing clearance is not taken. The Award of the Arbitrator was reversed and the complaint dismissed.

St. Louis. Decision No. 20—March 9, 1942 (20-4F-41).

Victor Thien, doing business as Palm Theatre, and Paramount Film Distributing Corporation, 20th Century-Fox.

The Appeal Board stated that it was substantially in accord with the Arbitrator's view of the case but further stated that as the Arbitrator found that the intervenor by delaying the playing of pictures at one of his theatres, the Aubert, which picture had been previously played at his other theatre, the Union, the Complainant's theatre, the Palm, would be actually delayed in showing the picture. It therefore reversed the Arbitrator's award, dismissing the complaint and directed that the maximum clearance which may be granted the Aubert Theatre over the Palm Theatre in licenses hereafter

entered into by the distributors involved shall be three days, not later than twenty-one days after the last play date at the Union Theatre, except that, with respect to pictures played by Aubert second run after first run downtown, such maximum clearance shall be fourteen days. It further directed that the clearance granted should not apply to pictures which Aubert shows at fifteen cents admission, in which case Palm may retain its present actual clearance of twenty-eight days over Aubert on such pictures.

Washington. Decision No. 19—March 2, 1942 (14-8F-41).

Linden Theatre Company, Inc., and Vitagraph, Paramount, RKO.

The Appeal Board stated that the record did not indicate that the present clearance which the Arbitrator found reasonable was excessive or that the competition between the theatres was so slight as to justify the Board in disregarding the conclusion of an Arbitrator who had given the questions presented to him full and fair consideration. The Board affirmed the Arbitrator's Award in dismissing the complaint.

REVIEW OF RECENT COURT DECISIONS

WALTER J. DERENBERG

PART I. INDUSTRIAL ARBITRATION CASES

NEW YORK SUPREME COURT—SPECIAL TERM

Reference to Shop Committee as Condition Precedent to Arbitration. Motion to stay an arbitration on the ground that the terms and conditions of the arbitration agreement required the reference of the dispute to the Shop Committee prior to the submission to the arbitrator. *Held*, motion for a stay granted.

> "The fact that there may be no shop committee in existence at the present time is not material, in view of the fact that a meeting to elect such a committee is scheduled for July 15, 1942. The controversy can be presented to this new committee when elected. This cannot work prejudice to any of the parties."

Matter of Lilienfeld (*Roth*), Sup. Court, Special Term, Part I, N. Y. L. J., July 15, 1942, p. 117, Benvenga, J.

Effect of Amalgamation of Two Unions. Motion to compel arbitration. In opposition to the motion it was alleged that the petitioning union had no right to enforce the arbitration clause because it was not a signatory to the collective agreement. *Held*, motion granted. While it is true that the contract was entered into with Local No. 1224 and not with petitioner, Local No. 1225, these two Locals became amalgamated, had the same type of workers, and were under the same leadership. The situation is not dissimilar from that presented by the merging of two corporations.

The Court also rejected respondent's contention that arbitration could not be enforced because the collective agreement had terminated.

> "Here arbitration is sought of disputes which occurred during the term of the contract, and the arbitration clause with reference thereto survives the termination thereof."

Matter of Anderson (*Universal Brass Turning Co., Inc.*), Sup. Court, Spec. Term, Part I, N. Y. L. J., August 3, 1942, pp. 263-4, Kadien, J.

No Review of Errors of Law or Fact. Motion to confirm an award. The motion was opposed on the ground that the award was unjustified by the evidence. Held, motion granted.

> "The difficulty with the respondent's position is that it overlooks the well-settled rule of law that an award of an arbitrator may not be set aside for errors of judgment, mistakes of law or of fact, departures from strict legal rules, or anything else in the absence of fraud, corruption,

bias, or similar circumstances. If an arbitrator keeps within his jurisdiction and is not guilty of improper conduct the award is generally speaking unassailable."

Matter of Retail Employees Union, Local No. 830 (Vim Elec. Co.), Sup. Ct., Spec. Term, Part I, N. Y. L. J., June 25, 1942, p. 2678, McLaughlin, J.

What Constitutes Final and Definite Award. Motion to confirm award. The motion is opposed on the ground that the arbitrator's award was indefinite and not final. Under the submission agreement the arbitrator was to determine all provisions which were to be incorporated into a labor agreement between the parties. In his award, he found with regard to wages as follows:

"The wages and other terms of working conditions for waiters, busboys, bartenders, captains and assistant head waiters shall remain as they are now. . . . ."

Held, motion to confirm denied. The above quoted finding of the arbitrator with regard to wages does not satisfy the terms of the submission, inasmuch as it cannot be incorporated in the collective agreement. Likewise, the additional conclusion in the award

"that a verbal agreement was reached in January of 1942 covering the terms and conditions of employment for at least the ensuing year"

is indefinite and uncertain without explicit indications as to the terms and conditions of employment for at least the ensuing year. *Leon & Eddie, Inc. (Siegel)*, Sup. Ct., Spec. Term, Part I, N. Y. L. J., October 14, 1942, p. 1014, Pecora, J.

What Constitutes Final Award. Motion to confirm an award. The award provides, *inter alia*, for a deduction of "any sum claimed by Josephine Asaro during such period." *Held*, motion denied. The arbitrator failed to find the amount, if any, so earned, and in the absence of such a finding, the award cannot be considered a final and definite award and can be confirmed only as to the remaining part thereof. *In re Roth (Lilienfeld)* Supreme Court, Spec. Term, Pt. I, N. Y. L. J., June 13, 1942, p. 2514, McLaughlin, J.

Interest May Be Awarded the Victorious Party from Date of Award up to Entry of Judgment. Motion to reargue this case was made on the ground that the portion of the award which directed reemployment was not severable from that portion which was defective. *Held*, motion to reargue denied.

"There does not seem to be any good reason for vacating the entire award merely because that portion which awarded back wages is unenforcible for indefiniteness. . . . ."

Roth, treas. of Local 45-B, United Furniture Workers of America, C. I. O., (Roth, treas. & c. v. Lilienfeld), Sup. Ct., Spec. Term, Pt. I, N. Y. L. J., June 30, 1941, p. 2730, McLaughlin, J.

Lack of Acknowledgment of Award. Motion to vacate an award on the ground that the arbitrator's award lacked the acknowledgment required by

Section 1460, Civil Practice Act. The award was delivered on February 24, 1942, and was not acknowledged until April 2, 1942, when the arbitrator appeared before a notary public and acknowledged the award. A certificate of acknowledgment was attached to a duplicate of the award theretofore delivered to the employer. *Held*, motion granted.

> "In my opinion, the lack of an acknowledgment on the award when originally delivered was a fatal defect and the award must be regarded as void. As soon as the arbitrator had made and delivered the award in the first instance he became *functus officio* and his powers ceased for all purposes (Flannery v. Sahagian, 134 N. Y., 85; Herbst v. Hagenaers, 137 N. Y. 290). The attempt to cure the defect was therefore ineffectual. No award lacking an acknowledgment may be confirmed or enforced (Sandford Laundry & Simon, 285 N. Y. 488)."

Matter of E. A. Laboratories, Inc. (*Thomas*), Sup. Ct., Spec. Term, Part I, N. Y. L. J., May 18, 1942, p. 2117, Dodd, J.[1]

Collective Agreement Between Employer and Union Providing for Arbitration Binding Upon Individual Employee. Motion to stay an action in the Municipal Court. Respondent sued for wages for a certain period. In defense to said action, the Union alleged that a collective agreement between it and respondent's employer provided as follows:

> "This agreement . . . . shall extend to and be binding upon the Company, its successors or assigns, and the Union *and each of its present and future members*, jointly and severally."

It also provided:

> "All disputes, complaints or grievances arising between the parties to this agreement involving any question of interpretation or the application of any clause of this agreement, *shall be adjusted* by negotiation between the parties, if possible, *as set forth in the preceding paragraphs, failing that, the matter shall be decided by arbitration.*"

The respondent alleged that this arbitration clause was not binding upon him and that the civil action brought by him should not be stayed. *Held*, motion for a stay granted. Said the Court:

> "The words I have italicized indicate that grievances relating to a single employee if not adjusted under paragraph XVII, are to be 'decided by arbitration.' The papers before me show that both the union and the employer are willing to arbitrate the dispute in question. Under these circumstances, respondent cannot avail himself of the benefits of the contract in question without observing its provisions, including the provision for arbitration."

In re P. S. Thorsen & Co., Inc. &c. (*Neves*), Sup. Ct., Spec. Term, N. Y. L. J., July 14, 1942, p. 113, Froessel, J.

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[1] *Cf.* to the contrary *Matter of Verly Bldg. Corp.*, Appellate Division, Second Dept., N. Y. L. J., June 23, 1942, p. 2652, reported herein, p. 301.

What Constitutes An Arbitrable Controversy. Motion to compel arbitration. Under the contract between the parties, the respondent was given the right

> "to discharge an employee during the course of his employment for just cause, without being responsible to the Union for his actions, and such just cause shall be defined to include dishonesty, offensive or discourteous action toward customers, and late or tardy habits in reporting for work."

Arbitration was sought with regard to an issue of proper discharge of an employee. *Held,* motion denied. Inasmuch as it was within the discretion of the respondent under the above cited clause to discharge an employee, there is no arbitrable issue presented. *In re Pellegrino* (*Klein*), Sup. Court, Spec. Term, Part I, N. Y. L. J., August 3, 1942, p. 261, Benvenga, J.

SUPREME COURT OF PENNSYLVANIA

Errors of Law Reviewable Under Arbitration Act of 1927. Appeal from a judgment confirming an award. A board of arbitrators was appointed under the Act of April 25, 1927, to determine the validity of a claim for damages filed by the general contractor against the owner under a building contract. The board found in favor of the contractor. It is alleged that the arbitration board made a mistake of law in determining that the defendant was liable for the loss occasioned to plaintiff by the strike of the latter's employees. The lower court held that it had no jurisdiction under the Act of 1927 to review the board's findings as to the applicable law and that the award should be confirmed. *Held,* reversed.

> "That this Court may review the award on appeal cannot be seriously questioned. The Act of 1927, under which this proceeding was instituted, places an award on the same footing as the verdict of a jury, and, therefore, mistakes of law may be rectified on appeal."

Navarro Corporation v. *School Dist. of Pittsburgh* (1942) 25 Atl. (2d) 808.

CIRCUIT COURT OF NEW JERSEY

Employee as Third Party Beneficiary Under Agreement Between Union and Employer. Motion to compel arbitration. Petitioner is a member of the New York Printing Pressmen's Union No. 51, which had entered into a collective agreement with the defendant. He alleges that he was unjustly discharged from his employment. Defendant challenges the petitioner's right to institute this proceeding inasmuch as he did not personally sign the agreement entered into between the Pressmen's Union and defendant. *Held,* motion granted. The petitioner has a legal right to invoke the benefit of the arbitration statute.

> "According to section 10 of the agreement between the Pressmen's Union and the defendant, the contract expressly grants the right of an employee to have arbitrated the question presented by the petitioner on his motion. It was evidently the expressed intention of the parties to the agreement that the third party petitioner should be granted the right of arbitration."

Fagliarone v. *Consolidated Film Industries, Inc.* (1942) 26 Atl. (2d) 425.

CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

Enforcement of New York Award in Pennsylvania—Validity of Partial Award. Appeal from a judgment on an arbitration award. On January 27, 1938, the parties entered into an agreement governing working conditions at appellant's plant. This was supplemented by a letter, executed at the same time, which provided for what is labelled by the parties, the "Dyers' Welfare Account." Subsequent differences induced the parties, on or about June 29, 1939, to submit their disputes to a named individual as sole arbitrator.

Defendant employer is a New Jersey corporation, while plaintiff union represents citizens of Pennsylvania. The arbitration was held in New York and the award rendered there. Defendant refused to comply with the award and suit was brought in Pennsylvania on the award. The lower court upheld the award. *Held*, affirmed. The Pennsylvania courts have treated an award as comparable to a judgment and not subject to collateral attack. The validity of a judgment is determined by the law of the state where rendered. The general authority is to the effect that the validity of an arbitration award is determined by the law of the place of its rendition.

> "We conclude that by the Pennsylvania rule of conflict of laws, the validity of the award in this case is a question of New York law. The decisions of that state contain strong expressions of its policy in upholding arbitration awards. . . . ."

Moyer et al. v. *Van-Dye-Way Corporation* (1942) 126 F. (2d) 339.

PART II. COMMERCIAL ARBITRATION CASES

NEW YORK COURT OF APPEALS

Arbitration Clause in Invoice Not Binding Arbitration Agreement. Motion to compel arbitration and a stay of civil action. During the period beginning on April 10 and ending on June 7, 1940, petitioner, a domestic corporation, on twenty several occasions sold and delivered a quantity of textiles to respondent. A controversy between them having subsequently arisen out of these transactions, petitioner demanded that it be settled by arbitration. Contrariwise, respondent commenced an action in the Supreme Court for an adjudication of their differences. Thereupon the petitioner moved for an order directing arbitration. By his answer, respondent denied the existence of a contract to arbitrate. On the invoices, all of which were retained by respondent, there was stamped in red ink the following:

> "All controversies arising from the sale of these goods are to be settled by arbitration."

Both lower courts found a valid arbitration clause and ordered arbitration to proceed. *Held*, reversed. The whole question is one of the effect of respondent's silence in the face of the arbitration clause stamped on the invoices. An invoice as such is not a contract, but merely a detailed statement of the nature, quantity and cost of the things invoiced. A person is under no obligation to do or say anything concerning a proposition which

he does not choose to accept. There must be actual acceptance or there is no contract. *In re Tanenbaum Textile Co.* v. *Schlanger* (1942) 287 N. Y. 400, 40 N. E. (2d) 225.

Arbitration Clause in Contract Violating O. P. A. Regulations Is Void. Appeal from orders of the Appellate Division permanently staying an arbitration proceeding. Petitioner had entered into four separate contracts for the sale of a quantity of plainclothes. These contracts contained an arbitration clause. On June 27, 1941, an OPA decree established a maximum price of this particular merchandise "regardless of any commitment theretofore entered into." The price established by the OPA was 8.037¢ per yard, while the contract prices were somewhat higher, 9¢ per yard, 9.8¢ per yard, etc.

When the day for delivery arrived, the seller refused the demand of the purchasers to make deliveries at the maximum price set forth in the OPA order on the ground that performance of the contract had been forbidden by law and nonperformance had been excused. The buyers demanded arbitration. The seller moved for a stay of the arbitration on the ground that the OPA order had frustrated the entire contract, including the incidental provision for arbitration.

The Court of Appeals, in a five to two decision, held that the order of the Price Administrator made performance of the contract impossible, that nonperformance was excused, and that, therefore, the entire contract, including the arbitration clause, was frustrated. Said the majority:

> "By act of Government there was complete frustration of performance excusing the seller from performance as a matter of law. . . . . The arbitration clause was only an incidental part of an indivisible contract of purchase and sale and when the contract was at an end the arbitration provision no longer existed or had any force whatsoever. . . . ."

In a strong dissenting opinion, Chief Judge Lehman pointed out that the effect of the order of the Price Administrator should have been left to the arbitrators to decide. *Matter of Kramer & Uchitelle, Inc.* (*Eddington Fabrics Corp'n.*), 288 N. Y. 467, 43 N. E. (2d) 493, affirming 263 App. Div. 805 and 263 App. Div. 856, affirming N. Y. Sup. Ct., Spec. Term, Part I, N. Y. L. J., October 28, 1941, p. 1248.[1]

Cancellation of Principal Contract a Preliminary Question of Fact Under Sec. 1450, New York C. P. A. Appeal from an order granting motion to compel arbitration. It was alleged by the defendant that the question of

[1] To the same effect, *In re Silverman* (*Pearl-Dor Fabrics Corp'n.*), Sup. Ct. Spec. Term, Part I, N. Y. L. J., July 30, 1942, p. 235. In *Matter of Mendelson* (*Auburn Fabrics, Inc.*), Sup. Ct., Spec. Term, Part I, N. Y. L. J., July 18, 1942, p. 147, Mr. Justice Hofstadter held that the issue as to whether or not the contract price violated the price schedule fixed by the OPA should not be determined on the meager basis of affidavits, but should be referred to trial. There is no indication in this decision that the issue of the effect of such order should eventually be determined by the arbitrators rather than by the court in the preliminary proceeding.

whether or not the original contract was cancelled was for the Court and not for the arbitrators to decide. In rejecting this contention and upholding the lower court, the Court of Appeals said:

> "While it must ever be borne in mind that a court has no power to grant a motion to compel arbitration, unless the subject-matter is comprised within the agreement to arbitrate made by the parties, yet when once an agreement to arbitrate has been made, such an agreement must be considered in the light of the broad language used in the above arbitration statute (Civ. Prac. Act., sec. 1450). This language seems to imply that all acts of the parties subsequent to the making of the contract which raise issues of fact or law, lie exclusively within the jurisdiction of the arbitrators. It is to be noted that, contrary to the contention of appellant, the statute only requires the contract to have been made and does not require that it shall continue to be in existence. The language of the agreement to arbitrate, of course, must be sufficiently broad so as to permit of the application of the general principle that all issues subsequent to the making of the contract are not for the court but for the arbitrators. Where, however, as here, the language of the provision providing for arbitration uses not only the phrase 'any and all controversies arising out of the contract' but also 'any and all controversies in connection with the contract,' this language would appear sufficiently broad to express the intention of the parties to include within the exclusive jurisdiction of the arbitrators as a general rule all acts by the parties giving rise to issues in relation to the contract, except the making thereof."

In the matter of Harry Lipman, d/b/a Acme Shellac Products Company v. *Haeuser Shellac Company, Inc.*, N. Y. L. J., Sept. 24, 1942, p. 713.[1]

NEW YORK SUPREME COURT—APPELLATE DIVISION

Waiver of Right to Arbitrate Not Abandoned if Arbitration Demanded in Amended Answer. Appeal from an order denying motion to compel arbitration. The contract of the parties had a provision affording either of them the right to demand arbitration concerning any dispute arising with respect to the provisions of the agreement. Plaintiff sued at law claiming a breach of contract. Defendants appeared by an attorney and obtained a stipulation extending their time to answer. The affidavits state that at the time this stipulation was obtained there was some discussion with respect to defendants' right to demand arbitration. However, the stipulation did not expressly reserve such right.

At the end of the stipulated period defendants served an answer, which consisted solely of a general denial. Within the time that defendants might amend their answer as of course they served a new answer, asserting the

[1] For subsequent decision by the Supreme Court in the same matter involving the issue of oral modification of the original contract, *cf. Matter of Lipman*, Sup. Ct., Spec. Term, Part I, N. Y. L. J., September 29, 1942, p. 797, Lewis, J. *Cf.* also *Matter of Pellegrino, as Treasurer, &c.* (*Klein*), Sup. Ct., Spec. Term, Part I, N. Y. L. J., September 28, 1942, p. 774.

right of arbitration under the contract. *Held*, reversed (Mr. Justice Cohn dissenting).

> ". . . . the narrow question is presented as to whether, because in their original answer (which they had a right to amend as a matter of course) defendants failed to claim the right to arbitrate, this constituted an intentional waiver of that right. The precise point does not seem to have been decided in any of the numerous cases concerning what constitutes a waiver of the right of arbitration.
>
> "Applying the general rules applicable in determining whether a waiver was intended, we find no such unequivocal act by the defendants as to constitute an election and waiver. When defendants served the original answer they knew that they might amend it as of course. Defendants' attorney asserts that his original answer was served hurriedly on the eve of his departure on a business trip. . . . .
>
> "While it has been held that the question of abandonment of the right to arbitrate does not necessarily depend on the number of steps which have been taken and that such abandonment may be evidenced by the first step, if it clearly indicates an intent to go that way (Matter of Young v. Crescent Development Co., 240 N. Y. 244), here the first step taken was one subject to change at defendants' will. Under the circumstances, we find that it did not constitute a final election."

Short et al. v. *National Sport Fashions, Inc. et al.*, 35 N. Y. S. (2d) 169 (1942).

Lack of Acknowledgment of Award May be Corrected. Appeal from an order confirming an award. The award had not been acknowledged by the arbitrator at the time of delivery, but was acknowledged before it had been filed in the County Clerk's office. The lower court held that the subsequent acknowledgment was ineffective and the award void. *Held*, reversed. Failure to acknowledge the award when it was signed was entirely inadvertent.

> "Section 1461 of the Civil Practice Act does not provide that a motion to confirm an award may not be 'entertained' before the award is acknowledged, but in this proceeding the acknowledgment of the award was made on the day on which the motion to confirm was heard, and it was, therefore, before the court when it 'entertained' the motion. Section 1460 of the Civil Practice Act provides that 'to entitle the award to be enforced' it must be acknowledged. Here the award was acknowledged before the motion to confirm, the first step looking to enforcement, was decided. Correction of the award by supplying the omitted acknowledgment after the award was signed was within the discretion of the court, was required to effect the intent of the award and to promote justice between the parties and did not affect a substantial right of any party on the merits of the controversy. (Civil Practice Act Secs. 105, 1462-a)."

Matter of Verly Bldg. Corp. (*Gertner*), Appellate Division, Second Dept. N. Y. L. J., June 23, 1942, p. 2652.

NEW YORK SUPREME COURT—SPECIAL TERM

Exclusion of Representation by Counsel by Trade Association Rules. Motion for an order permitting petitioner to be represented by counsel at an arbitration hearing. *Held,* denied. The parties expressly agreed to be bound by the rules of arbitration of the National Federation of Textiles, Inc. The rules provide that the parties may not be represented by counsel. The Court is without power to set these rules aside. *In re Dweck* (*Rayflex Mfg. Co. Inc.*), Sup. Court, Spec. Term, Part I, N. Y. L. J., p. 447, Hecht, Jr., J.

Effect of Order of Defense Communications Board on Arbitration Agreement. Motion to compel arbitration. Arbitration is opposed on the ground that the contract between the parties had been terminated by virtue of an order made by the Defense Communications Board of the United States which directed the closing of respondent's stations, offices, and facilities. *Held,* motion granted. Respondent has not been dissolved and has a legal existence. The contract between the parties being valid when executed, the right to arbitrate any controversy which occurred during the period of its operation is not extinguished. *Matter of Selly, pres. of American Communications Ass'n.* (*French Telegraph Cable Co.*), Sup. Court, Spec. Term, Part I, N. Y. L. J., September 18, 1942, p. 638, Null, J.

Effect of Priority Regulations of War Production Board on Arbitration Agreement. Motion to compel arbitration. Respondent alleges that the contract containing the clause has become illegal and unenforceable because of certain regulations issued by the War Production Board and that by acceptance of delivery under the contract, his inventory would exceed the minimum working inventory permitted under existing priority regulations. Petitioner disputes this contention and alleges that an issue of fact exists with regard to the status of the inventory at the time of delivery. *Held,* motion to compel arbitration denied without referring the alleged question of fact to a preliminary trial. Said the Court:

> "Plaintiff contends that the status of defendant's inventory is a question of fact which should be determined in the arbitration. I do not agree with this contention.
>
> "If the contract herein was violative of the provisions of Priority Regulation No. 1, it was illegal by operation of law and the agreement to arbitrate contained therein become unenforceable (Matter of Kramer & Uchitelle, N. Y. L. J., October 28, 1941, aff'd Court of Appeals, N. Y. L. J., July 30, 1942). True it is that in this case the amount of defendant's inventory which determination controls the application of the priority regulation is a factual question, but it is one to be decided by the court and not by arbitrators."

Federated Textile, Inc. v. *Glamour Girl, Inc.*, Sup. Court, Spec. Term, Pt. I, N. Y. L. J., August 24, 1942.[1]

[1] An appeal has been taken from this decision to the Appellate Division.

Arbitration Clause in Contract Violating O. P. A. Regulations is Void. Motion to stay an arbitration on the ground that the principal contract containing an arbitration clause had become impossible of performance because of the establishment of ceiling prices by the Office of Price Administration and certain regulations issued by the Office of Production Management. *Held*, motion granted. The general preference order issued by the WPB lead to a complete frustration of the contract. After quoting from the *Kramer & Uchitelle, Inc.* case (p. 299) at length, the Court said:

> "The condition which would have made performance of the contract valid was not fulfilled on the date fixed for performance. There was 'complete frustration of performance excusing . . . . performance as matter of law' (Matter of Kramer & Uchitelle, Inc., *supra*), as though the contract had been executed prior to the making of the general preference order."

Matter of Kahn & Feldman, Inc. (*Rothschild et al. &c.*), Sup. Court, Spec. Term, Pt. I, N. Y. L. J., August 11, 1942, p. 319, Schreiber, J.[1]

Arbitration Clause on Back Page of Contract Enforceable. Motion to stay arbitration. Petitioner alleges that the provision for arbitration was not "subscribed" by them because it was printed on the back of the contract. *Held*, motion denied. The provisions printed on the back have been made a part of the contract by an express provision to that effect appearing above the signatures of the parties. *Progressive Coat Co.* v. *Z. Alpert & Sons*, Sup. Ct., Spec. Term, Part I, N. Y. L. J., August 27, 1942, p. 439, Walter, J.[2]

Directors' Agreement to Arbitrate Corporation's Administrative Affairs Void as Against Public Policy. Motion to compel arbitration of a difference of opinion between the directors of a corporation. *Held*, denied on the ground

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[1] *Cf. Matter of Kramer & Uchitelle, Inc.* (*Eddington Fabrics Corp'n.*), 288 N. Y. 467, 43 N. E. (2d) 493, affirming 263 App. Div. 905 and 263 App. Div. 856, affirming N. Y. Sup. Ct., Spec. Term, Pt. I, N. Y. L. J., October 28, 1941, p. 1248.

Cf. in this regard *Matter of Brodey* (*Georges River Woolen Mills*), Sup. Ct., Spec. Term, Pt. I, N. Y. L. J., Nov. 4, 1942, p. 1314, Valente, J., where a motion was made to stay an arbitration on the ground that the arbitration agreement was illegal because the prices fixed in the contract exceed the ceiling imposed by the Office of Price Administration. *Held*, motion denied. The agreement contains an express provision as follows: "prices on any undelivered portion of this contract are subject to any further increase or *decrease* due to governmental action."

It was further contended that the dispute as to the quality shall be determined by the Mutual Adjustment Bureau prior to arbitration. *Held*, however, that the arbitrators may decide that no determination as to the quality is necessary or material to their award and that therefore no reason appears to stay the arbitration at the present time.

[2] *Cf.*, however, the decision of the Court of Appeals in *In Re Tanenbaum Textile Co.* v. *Schlanger* (1942) 287 N. Y. 400, 40 N. E. (2d) 225 (p. 298).

that directors may not divest themselves of the obligations of their office by vesting the exercise of their discretion in an arbitrator.

> "Neither stockholders nor directors can surrender their obligations and functions as such, for determination by arbitration. Management of a corporate enterprise by arbitrators is repugnant to the concept of corporate structure. Whether the parties entered into the agreement as stockholders or directors is not material."

Matter of Hess (243-245 East 50th St. Corp'n.), Sup. Court, Spec. Term, Part I, N. Y. L. J., September 11, 1942, p. 555, Null, J.

No Waiver of Arbitration If Asserted in the Amended Answer. Motion to compel arbitration. Respondent alleges that petitioner has waived the right to enforce arbitration because he had joined issue in a civil action brought by respondent against petitioner. In said action petitioner has served an answer containing denials, set-offs, and a counterclaim but no demand for arbitration. However, in the amended answer the arbitration agreement was set up as a defense. *Held,* motion to compel arbitration granted. The amended complaint superseded the original complaint and petitioner did not waive its right to seek arbitration as to the new causes of action alleged in the amended complaint. On the contrary, the petitioner preserved its right to ask for arbitration when it pleaded such defense in the amended answer. *Matter of Dandy Dress, Inc. (Acme Merchants Service, Inc.)*, Sup. Court, Spec. Term, Part I, N. Y. L. J., October 15, 1942, p. 1031.[1]

Waiver of Arbitration Agreement Through Failure to Assert It in the Answer. Motion to compel arbitration. It is alleged in opposition to the motion that an action was heretofore commenced by the respondent in the City Court where the petitioner herein interposed an answer, that said action appeared on the calendar for trial, and that the case was marked ready. *Held,* motion denied. Petitioner, by failing to assert her right to arbitration in the answer and by her participation in the City Court action, has waived or abandoned her right to arbitrate. *Matter of Perlmutter (Astoria Contracting Co., Inc.)*, Sup. Ct., Spec. Term, Part I, N. Y. L. J., July 23, 1942, p. 185, Kadien, J.[2]

Effect of Accord and Satisfaction on Enforcement of Arbitration Agreement. Motion to compel arbitration. It is alleged that the motion should be denied because an executed accord and satisfaction had extinguished the original contract between the parties. *Held,* motion to compel arbitration granted.

> "It would stifle the salutary processes of arbitration to hold that in every case where a part payment is made, arbitration cannot proceed until it is determined whether such part payment constituted an alleged accord and satisfaction."

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[1] See also *Short et al.* v. *National Sport Fashions, Inc., et al.*, 35 N. Y. S. (2d) 169 (1942); reported on p. 300.

[2] *Cf. Short et al.* v. *National Sport Fashions, Inc., et al.*, 35 N. Y. S. (2d) 169 (1942), p. 300.

Matter of Lipstein Bros. & Haltman, Inc. (*Alro Converting Corp.; General Arbitration Council of the Textile Industry*), Sup. Court, Spec. Term, Pt. I, N. Y. L. J., September 10, 1942, p. 544, Botein, J.

Attorneys' Fees Not Arbitrable Unless Specifically Included in the Arbitration Agreement. Motion to compel arbitration of attorney's claim for legal expenses in connection with a prior arbitration proceeding. The motion was resisted on the ground that the attorneys' fees are not arbitrable under the original agreement. *Held,* motion denied. It is true that the arbitration agreement provides that the costs of the arbitration shall be borne as directed in the award, but a claim for legal fees in connection with an arbitration proceeding does not come within the definition of fees and expenses of arbitration under Section 1457 of the Civil Practice Act. *McKinney* v. *McKinney,* Sup. Court, Spec. Term, Pt. I, N. Y. L. J., July 30, 1942, p. 235, Benvenga, J.

Extension of Time for Arbitration Proceeding by the Court. Motion to compel arbitration. The motion is opposed on the ground that the arbitration agreement provides for the delivery of the award on or before June 15, 1942. Petitioner alleges that due to the dilatory tactics on the part of respondent's attorney, it had become impossible to have the arbitration proceed before that date and that, therefore, the Court should extend the time accordingly. *Held,* motion granted. Respondent, by failing to proceed promptly with the arbitration, made it impossible for the arbitrators to render a decision prior to June 15, 1942. Accordingly, the respondent should be directed to proceed with the arbitration. *Matter of Elkin* (*Rosenthal*), Sup. Ct., Spec. Term, Part I, N. Y. L. J., July 23, 1942, p. 185, Kadien, J.

Arbitrators' Fees May Not be Awarded Solely Against Victorious Party. Motion to confirm an award. Petitioner asked for confirmation except as to that part of the award which charges him with the fees and expenses of the arbitration. He asserts that it was manifestly unfair to award all costs and fees against the victorious party for the sole reason that the respondent had meanwhile filed a petition in bankruptcy, so that the fees, including the arbitrators' fees, could not be collected from him. *Held,* award modified so as to provide for joint payment by both parties of the fees and expenses of the arbitration.

> "It is true that in the case at bar the umpire recommends that the fees and expenses of arbitration be borne by the petitioners. If the recommendation had been made before the institution of the bankruptcy proceedings confirmation would probably have followed almost as a matter of course. But inasmuch as the recommendation was made at a time when the umpire knew that the respondent was without assets to satisfy the claims of his creditors, it is open to the objection that it may be tainted by self-interest on the part of the umpire.
>
> "Undoubtedly, as the umpire urges, he is entitled to compensation. But it does not follow that he is entitled to compensation from the peti-

tioners. As the umpire found that the respondent had breached his agreement with the petitioners, the petitioners would seem justified in feeling that the cost and expenses of arbitration should be borne by the respondent. But while the general rule is that a party in whose favor a final judgment has been rendered is entitled to costs (see C. P. A., secs. 1470, 1475), that, as we have seen, is not the rule under awards. In view of the power given to this court to modify an award so as to promote justice between the parties (C. P. A. sec. 1462-a), I feel that, under the circumstances of this case, substantial justice would be promoted if the parties were jointly required to pay the fees and expenses of the arbitration."

Matter of Bernstein (*Perlmutter*), Sup. Court, Spec. Term, Part I, N. Y. L. J., July 30, 1942, p. 235, Benvenga, J.

Foreign Award Enforceable in United States. Motion for summary judgment in an action based on a German award entered in Germany. In 1924 both parties, then residents of Germany, entered into a contract whereby the defendant employed plaintiff, an actress, to give a number of performances. When disputes arose as to the performance of the contract, a Berlin Arbitration Board handed down an award granting plaintiff damages in the sum of 9,600 marks and costs. This award was confirmed by an Appellate Arbitration Board. A writ of execution was issued by the German Court in 1925. The award was never paid. Defendant subsequently departed from Germany and became a resident of California and this action was brought to recover the amount awarded to plaintiff.

Defendant denies that the arbitration award by the German Arbitration Board constitutes a final judgment of a court of record and that the case is barred by the statute of limitations. *Held,* motion granted. The Berlin Arbitration Board was a permanent tribunal validly established under German law. Its decisions were recorded and permanently enrolled. The arbitral judges were not appointed by the parties but by official designation.

"Moreover, the parties themselves selected those courts to adjudicate upon their disputes. They fully submitted themselves and their controversy to their jurisdiction without condition or limitation, and they should in justice be bound by their mandates (Dunstan v. Higgins, 138 N. Y. 70, 75). Those mandates may not be regarded as interlocutory, as the defendant contends, for they were intended to settle the rights of the parties and to award damages if need be. As such, they had all of the elements of finality and conclusiveness.

"Incidentally, it is not true that the proceeding subsequently instituted in the Landgericht was a proceeding to confirm the award and give it the status of a judgment. Its only purpose was to procure a writ of execution that would enable the plaintiff to enforce the award of the arbitration courts. It would have been entirely unnecessary if the defendant had chosen to pay the award. In that view of the proceeding, it is immaterial as to whether the defendant had notice of it or contested it. . . . .

"On the facts and the law this court must hold the judgment of the German arbitration court similarly conclusive upon the defendant in this action."

Coudenhove-Kalergi v. *Dieterle*, Sup. Court, Spec. Term, Part III, N. Y. L. J., June 23, 1942, p. 2647, Bernstein, J.

Motion to Set Aside Award of Interest Denied. Motion to amend a judgment on an award so as to eliminate therefrom the award of interest from the date of the award up to the date of entry of judgment. Petitioner alleges that Section 480 of the Civil Practice Act precludes the award of such interest because by its terms it refers "to any action" and speaks of "a verdict, report or decision" and not of arbitration awards. *Held*, motion denied.

"Not only would it be inequitable, under such circumstances to suspend interest between the date of the award and the entry of the judgment, when it is borne in mind that proceedings to confirm an arbitration award are often delayed, as indeed has been the case here, but it would also be contrary to statute. Section 1464 of the Civil Practice Act provides that upon the granting of an order confirming an award in arbitration, judgment in conformity therewith may be entered '*as upon a referee's report in an action . . . .*' (emphasis supplied). We thus find in respect to a judgment in arbitration proceedings the very words set forth in section 480 of the Civil Practice Act, to wit: 'action' and 'report.' The word 'report' as here used can only refer to a report of a referee, and since under said section a judgment in arbitration is entered 'as upon a referee's report in an action,' section 480 of the Civil Practice Act is applicable. It follows that the allowance of interest during the period in question is clearly authorized, and the motion is accordingly denied, with $10 costs."

In re Bercik (*Solomon et al.*) Sup. Ct., Spec. Term, N. Y. L. J., July 1, 1942, p. 11, Froessel, J.

CALIFORNIA DISTRICT COURT OF APPEALS

Determination of Fair Rental Value Not Statutory Arbitration. Appeal from a decree nullifying an award. Appellant and respondent's predecessor had entered into a lease which provided, *inter alia*, that if the parties were unable to agree on the amount of rental to be paid upon expiration of the first term of the lease, such difference of opinion be submitted to arbitration. An arbitration was held, but the arbitrators held no formal hearing nor were any witnesses heard or subjected to cross-examination. Respondent rejected the award as being contrary to law and particularly to the provisions of the Code of Civil Procedure with respect to arbitration and instituted this action to set aside the award. Defendant moved to confirm the award. The lower court invalidated the award. *Held*, reversed. The so-called arbitration was not a statutory arbitration as defined by the California Law:

"We hold that the lease provision under consideration was not an arbitration agreement within the contemplation of the statute, but that

> it constituted a method devised and agreed upon by the parties for determining the rental value of the property for the period in question, and that the persons chosen had no other duty to perform than to make this valuation."

Rives-Strong Building, Inc. v. *Bank of America Nat. Trust & Savings Ass'n.* (1942) 123 P. (2d) 942.

Arbitrator's Appointment Through Oral Notification by Third Party Invalid. Appeal from a judgment setting aside an award. A lease signed by the predecessors of both parties provided that the arbitrators should, in case of disagreement, determine the purchase price and terms under which the leased property may be bought. The petitioners as well as the lessor, since deceased, appointed an arbitrator and the two thus appointed selected a third. After an award was rendered, petitioners moved to set aside the award on the ground that the arbitrator appointed by the deceased was never properly appointed. It appeared that there was no written appointment of said arbitrator by the deceased or any other person. In connection with the motion to vacate the award, the petitioners filed an affidavit of the third arbitrator himself, in which he stated that the deceased did not appoint him as arbitrator but that he was told by third parties that he had been so appointed. Said the affidavit:

> "That I make this statement to the Court that the Court may fully understand my position in the matter, and that my purporting to act as arbitrator was solely upon the statement of others, but not J. J. Lopez, that I was appointed and that my appointment was legal."

Held, judgment vacating the award affirmed. Inasmuch as this arbitrator was never properly appointed, there was no valid arbitration and the award rendered is void. *Bewick et al.* v. *Mecham* (1942) 121 P. (2d) 815.

SUPREME COURT OF NORTH CAROLINA

Proceeding Under C. S., Section 99 Not a Statutory Arbitration. Proceeding to determine the validity of a claim against an estate. The administrator of the estate of the claimant entered into an agreement in writing to refer a certain matter in controversy to three disinterested persons who should

> "hear the evidence relating to said claim, and determine the justness thereof, and make their award in accordance with their finding, as provided in section 99 of the North Carolina Code of 1939."

A decision was handed down and a report filed in favor of the claimant. The administrator appealed to the Superior Court. The claimant moved to dismiss the appeal on the ground that there was no authority at law for such an appeal and that the court was without jurisdiction. The Court below reversed the decision of the referees and rendered judgment against the validity of the claim. *Held,* reversed. The sole question to be decided is whether the determination of a controversy, in accord with the provisions of C. S., Section 99, is final and conclusive or whether it is open to appeal

under the ordinary rules pertaining to consent references in civil actions.[1] In deciding that the referees' decision was conclusive between the parties, the Court said this proceeding differs from the statutory procedure regulating arbitration and award under Ch. 94, Public Laws 1927, which provides for the supervision of the court. No jurisdiction was conferred on the judge by C. S. Sec. 637 since this was neither a civil action nor a special proceeding. *In re Reynolds' Estate* (1942) 20 S. E. (2d) 348.

[1] Section 99 reads as follows: "If the executor, administrator or collector doubts the justness of any claim so presented, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three, whose proceedings shall be the same in all respects as if such reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the Clerk's office where the letters were granted, and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein: Provided, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against it."

SECTION OF DOCUMENTS

DRAFT FOR A STATE ARBITRATION ACT

SECTION 1. *Agreement of Parties.* Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this Act, any controversy which may be the subject of an action existing between them at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement.

The provisions of this Act shall not apply to any arbitration agreement between employers and employees or between employers and associations of employees, unless such agreement specifically provides that it shall be subject to the provisions of this Act.

SECTION 2. *Definition of Court and Method of Hearing Applications.* The term "court" when used in this Act means the ..... (Here the appropriate court in each state is to be inserted.)

Any application made under authority of this Act shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions or petitions, except as otherwise herein expressly provided.

SECTION 3. *Stay of Proceeding in Court.* If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in accordance with the agreement.

SECTION 4. *Remedy in Case of Default.* 1. A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement. Eight days' notice in writing of such application shall be served upon the party alleged to be in default. Service thereof shall be made in the manner provided by law for service of a summons in a civil action in the court specified in Section 2. If the court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the court shall make an order directing the parties to proceed to arbitrate in accordance with the terms of the agreement.

2. If the court shall find that a substantial issue is raised as to the existence or validity of the arbitration agreement or the failure to comply therewith, the court shall proceed immediately to the trial of such issue. If upon such trial the court finds that no written agreement providing for arbitration was made or that there is no default in proceeding thereunder, the motion to compel arbitration shall be denied.

3. Either party shall have the right to demand the immediate trial by jury of any such issue concerning the validity or existence of the arbitration agreement or the failure to comply therewith. Such demand shall be made before the return day of the motion to compel arbitration under this section, or if no such motion was made, the demand shall be made in the application for a stay of the arbitration, as provided under "4(e)" hereunder.

4. In order to raise an issue as to the existence or validity of the arbitration agreement or the failure to comply therewith, a party must set forth evidentiary facts raising such issue and must either

(a) make a motion for a stay of the arbitration. If a notice of intention to arbitrate has been served as provided in Section 6 hereof, notice of the motion for the stay must be served within twenty days after service of said notice.

Any issue regarding the validity or existence of the agreement or failure to comply therewith shall be tried in the same manner as provided in "2" and "3" hereunder; or

(b) by contesting a motion to compel arbitration as provided under paragraph "1" of this section.

SECTION 5. *Appointment of Arbitrators by the Court.* Upon the application of any party to the arbitration agreement and upon notice to the other parties thereto, the court shall appoint an arbitrator, or arbitrators, in any of the following cases:

(a) When the arbitration agreement does not prescribe a method for the appointment of arbitrators.

(b) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.

(c) When any arbitrator fails or is otherwise unable to act, and his successor has not been duly appointed.

(d) In any of the foregoing cases where the arbitration agreement is silent as to the number of arbitrators, three arbitrators shall be appointed by the court.

Arbitrators appointed by the court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate.

SECTION 6. *Initiation of Proceeding.* When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties out of or in relation to such agreement, the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate. Such notice must state in substance that unless within twenty days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, he shall thereafter be barred from putting in issue the existence or validity of the agreement or the failure to comply therewith.

SECTION 7. *Time and Place of Hearings.* The arbitrators shall appoint a time and place for the hearing and notify the parties thereof, and may

adjourn the hearing from time to time as may be necessary, and, on application of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award.

All the arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award. The court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

SECTION 8. *Failure to Appear.* If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them.

SECTION 9. *Time Award Made.* If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, and any award made after the lapse of such thirty days shall have no legal effect, unless the parties extend the time in which said award may be made or ratify any award made after the expiration of the thirty day period. Any extension of time or ratification of the award shall be in writing and signed by all parties to the arbitration.

SECTION 10. *Representation by Attorney Permissible.* Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators.

SECTION 11. *Power of Arbitrators.* The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring with him any book, record, document or other evidence.

The fees for such attendance shall be the same as the fees of witnesses in the ..... (insert appropriate court).

Subpœnas shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpœna to testify before a court of record in this State. If any person so summoned to testify shall refuse or neglect to obey such subpœna, upon petition authorized by the arbitrators or a majority of them, the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the courts of this State.

SECTION 12. *Depositions.* Depositions may be taken with or without a commission in the same manner and upon the same grounds as provided by law for the taking of depositions in suits pending in the courts of record in this State.

SECTION 13. *Order of Court before Final Determination.* At any time before final determination of the arbitration the court may upon application of a party to the agreement to arbitrate make such order or decree or take such proceeding as it may deem necessary for the preservation of the property or for securing satisfaction of the award.

SECTION 14. *Award.* The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a true copy of the award to each of the parties or their attorneys.

SECTION 15. *Order Confirming Award.* At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is vacated, modified, or corrected, as provided in sections 16 and 17. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it.

SECTION 16. *Order Vacating Award.* In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or other undue means.

(b) Where there was evident partiality or corruption in the arbitrators or any of them.

(c) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.

(e) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in Section 6, or without serving a motion to compel arbitration, as provided in Section 4, paragraph 1.

An award shall not be vacated upon any of the grounds set forth under "(a)" to "(d)," inclusive, unless the court is satisfied that substantial rights of the parties were prejudiced thereby.

Where an award is vacated, the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

SECTION 17. *Order Modifying Award.* In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

(a) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them.

(c) Where the award is imperfect in a matter of form, not affecting the merits of the controversy.

The order must modify and correct the award, so as to effect the intent thereof.

SECTION 18. *Notice of Motion to Vacate, Modify or Correct.* Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after a copy of the award is delivered to the party or his attorney. Such motion shall be made in the manner prescribed by law for the service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

SECTION 19. *Entry of Judgment on an Award.* Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars and disbursements, may be awarded by the court in its discretion.

SECTION 20. *Judgment-Roll.* Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment-roll:

1. The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award.
2. The award.
3. Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.
4. A copy of the judgment.

The judgment may be docketed as if it was rendered in an action.

SECTION 21. *Effect of Judgment and Enforcement.* The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

SECTION 22. *Appeals.* An appeal may be taken from any final order made in a proceeding under this act, or from a judgment entered upon an award, as from an order or judgment in an action.

SECTION 23. All acts and parts of acts inconsistent with this Act are hereby repealed. (Here specify acts to be repealed for each state.)

The American Arbitration Association

The American Arbitration Association was founded in 1926 and under its New York State Membership Corporation Charter its entire resources are devoted to advancing the knowledge and use of arbitration in the interests of the United States; the maintenance and operation of tribunals for the settlement or control of economic disputes; the study of arbitration and publication of its findings in books, journals, reports; and the coordination of arbitration facilities and education through a central information system which has 300 trade associations as channels of communication.

The Association is non-profit-making and non-partisan in character. None of its officers or directors may profit from any of its activities or undertakings. All of its income is devoted to the advancement of arbitration. By reason of its quasi-judicial responsibilities, the Association has no other activities and is identified with no other organization. The Association is governed by a Board of Directors representing the public, trade, commercial and labor interests of the United States.

The income of the Association is derived from the following sources: 1) Grants from foundations or contributions for research and education; 2) Fees for the administration of Tribunals; 3) Membership dues for the maintenance of the organization and the development of arbitration. The Association has no endowment, pays no dividends, makes no contributions to any other organizations and receives no subsidies or government funds.

The administrative offices of the Association occupy the eleventh floor of the Time & Life Building, 9 Rockefeller Plaza, New York. These headquarters include administrative offices, hearing-rooms and research facilities.

The Association maintains and administers a national system of commercial and industrial arbitration through 30 branch offices and over a network of 1600 cities where a dispute can be settled, day or night. It supports Inter-American and Canadian-American Commercial Arbitration Systems that keep Inter-American trade routes open. It has an Accident Claims Tribunal which is, in effect, a small claims tribunal.

The Association has set up a War Service Committee and through its tribunals and other facilities is pumping arbitration into defense industries for the voluntary driving out of disputes.